

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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IN RE: NATIONAL PRESCRIPTION MDL No. 2804  
OPIATE LITIGATION

Case No. 17-md-2804  
Judge Dan Aaron

This Document Relates To: Polster

The County of Lake, Ohio v.  
Purdue Pharma L.P., et al.  
Case No. 18-op-45032

The County of Trumbull, Ohio v.  
Purdue Pharma L.P., et al.,  
Case No. 18-op-45079

Track 3 Cases

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Remote videotaped deposition of
WILLIAM DiFRANGIA

January 14, 2021
9:03 a.m.

Renee L. Pellegrino, RPR, CLR
(Appearing Remotely)

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1 THE VIDEOGRAPHER: We are now on
2 the video record. Today is January 14th, 2021.
3 The time is approximately 9:03 a.m. eastern
4 standard time. We are here in the matter of
5 the National Prescription Opiate Litigation,
6 Track 3, to take the deposition of William
7 DiFrangia.

8 Will counsel please identify
9 themselves for the video record?

10 MR. BARNES: I'll start. On behalf
11 of Giant Eagle, Robert Barnes. I'll be taking
12 the deposition.

13 Other Defendants? CVS, can you
14 identify yourself?

15 MR. MOYLAN: Daniel Moylan,
16 Zuckerman Spaeder, for CVS.

17 MS. SWIFT: Kate Swift for
18 Walgreens.

19 MR. BEISELL: Patrick Beisell, on
20 behalf of Walmart.

21 MS. CONROY: Mildred Conroy, on
22 behalf of the Plaintiffs.

23 THE VIDEOGRAPHER: If there are no
24 other counsel, the court reporter may proceed.

25 THE COURT REPORTER: Due to the

1 need for this deposition to take place
2 remotely, will the parties stipulate that the
3 court reporter may swear in the witness over
4 virtual video conference?

5 MR. BARNES: Yes.

6 MR. WEINBERGER: Yes.

7 MR. APPEL: Very briefly, this is
8 Henry Appel. I am representing the Board of
9 Pharmacy and the witness in this case. I just
10 didn't verbalize quick enough.

11 WILLIAM DiFRANGIA, of lawful age, called
12 for examination, as provided by the Federal Rules
13 of Civil Procedure, being by me first duly sworn,
14 as hereinafter certified, deposed and said as
15 follows:

16 EXAMINATION OF WILLIAM DIFRANGIA
17 BY MR. BARNES:

18 Q. Okay. Good morning, Mr. DiFrangia.

19 A. Good morning.

20 Q. My name is Robert Barnes. I
21 represent Giant Eagle. Giant Eagle is in a
22 group of Defendants which I'll call the pharmacy
23 Defendants. They include Giant Eagle, CVS,
24 Walgreens, Rite-Aid and Walmart. And from time
25 to time here in the deposition when I refer to

1 "the pharmacy Defendants," I'll be referring to
2 that group of five Defendants.

3 Is that okay with you?

4 A. Yes.

5 Q. Okay. Just a matter of
6 housekeeping. Your counsel has asked us to take
7 a break at 11:30 to take care of some personal
8 matters, so we'll break for lunch at 11:30 so he
9 can do that and we'll simultaneously have our
10 lunch. We'll break for an hour from 11:30 to
11 12:30.

12 Mr. DiFrangia, I sent to you via
13 overnight mail a couple of exhibit binders,
14 volume 1 and volume 2. Did you receive those?

15 A. Yes.

16 Q. Just for everybody's understanding,
17 these exhibit binders were previously used in
18 the depositions of Trey Edwards and George
19 Pavlich, who are also Ohio Board current or
20 former agents and inspectors. I will maintain
21 the designation of the exhibits. So, for
22 example, if I ask you to please look at Edwards
23 Deposition Exhibit 3, it will be in the first
24 binder. The first binder contains the first 17
25 exhibits from Mr. Edwards' deposition and the

1 second binder contains further Trey Edwards
2 deposition exhibits, plus some Pavlich exhibits,
3 and then at the very end, the last 11, are
4 exhibits that we've solely designated in your
5 name. So we have Edwards plus Pavlich plus
6 DiFrangia exhibits and all of your exhibits are
7 at the end of the second binder.

8 Mr. DiFrangia, could you state your
9 full name for us?

10 A. William DiFrangia.

11 Q. And what's your date of birth?

12 A. May 23rd, 1982.

13 Q. And what is your current city of
14 residence, without giving me your specific
15 address?

16 A. Boardman Township.

17 Q. Ohio?

18 A. Yes.

19 Q. Now, you were -- you understand you
20 were noticed to be deposed in this case pursuant
21 to deposition notice and subpoena. Have you
22 seen that?

23 A. The subpoena I don't think I have
24 seen. I've obviously been notified that --

25 Q. Okay. If you look at the second

1 exhibit binder at the back, the Exhibits 1
2 through 11 have your exhibit sticker names on
3 them, and Exhibit 1 is your notice of videotaped
4 deposition.

5 A. Okay.

6 Q. If you just take a look at that, I
7 just want to make sure that you understand that
8 you're appearing today pursuant to such notice
9 and are ready to testify pursuant to that
10 notice.

11 THE TECHNICAL ASSISTANT: Mr.
12 Barnes, do you want me to go and drop that in
13 the marked exhibits folder?

14 MR. BARNES: Sure.

15 - - - - -

16 (Thereupon, Deposition Exhibit 1,
17 Notice of Videotaped Deposition of
18 William DiFrangia, was marked for
19 purposes of identification.)

20 - - - - -

21 A. So yes, Exhibit -- Exhibit 1 for
22 myself, yes.

23 Q. Okay. Have you ever been deposed
24 before, Mr. DiFrangia?

25 A. No, I have not.

1 Q. Have you ever testified in a hearing
2 or a court proceeding?

3 A. Yes.

4 Q. How many times?

5 A. Hearings, maybe ten. Court
6 proceedings, probably at least a hundred.

7 Q. A hundred times?

8 A. Yeah.

9 Q. Now, is that in connection -- are
10 all of those in connection with your current
11 duties at the Board of Pharmacy?

12 A. Some are with the current duties.
13 A lot of them have occurred with my prior
14 employment.

15 Q. Okay. Since you've never been
16 deposed in civil litigation, I'll just tell you,
17 generally, I'll ask the questions. Please wait
18 for me to finish asking my question. If you
19 don't understand it or need it explained or
20 didn't hear it quite right, please tell me and
21 I'll attempt to restate it for you. But if you
22 don't ask me, is it fair that I can assume that
23 you understood it and have no problems
24 understanding the full nature of the question?

25 A. Yes.

1 Q. Okay. The court reporter will be
2 taking down all of your responses, so be careful
3 not to respond by nodding your head or shaking
4 your head because she may not see that, so try
5 to verbalize as many -- all of your responses if
6 you can.

7 And then, finally, if at any time
8 you need a break to talk with your counsel,
9 Mr. Appel, let me know and we'll take a break
10 so that you can do that. Okay?

11 A. Okay.

12 Q. This is a remote deposition due to
13 the pandemic. If at any time you experience any
14 technical difficulties, let us know and we'll
15 try to correct them, but during the deposition
16 you're not to receive any texts or e-mails or
17 other types of communications that relate to
18 your testimony. Okay?

19 A. Okay.

20 Q. Are you alone at your present
21 location with respect to being deposed today?

22 A. Yeah. I'm in my office by myself.

23 Q. Okay. What did you do to prepare
24 for your deposition today, Mr. DiFrangia?

25 A. I had reviewed the exhibits that

1 were sent to me and we had a few prior
2 preparation events with, you know, our in-house
3 counsel, reviewed my work history and my
4 resume.

5 Q. Okay. Which counsel -- when you say
6 "in-house counsel," are you talking about
7 counsel for the Board of Pharmacy?

8 A. Yes.

9 Q. Would that be Mr. Appel and other
10 lawyers for the Board of Pharmacy?

11 A. Yes.

12 Q. Have you had any communications in
13 connection with your deposition with any counsel
14 in the litigation, either the Defendants, the
15 pharmacy Defendants' counsel, or the Plaintiffs'
16 counsel, which are counsel for Lake and Trumbull
17 Counties?

18 A. No.

19 Q. Have you ever had any communications
20 with any lawyers in this litigation representing
21 the counties, Lake and Trumbull County, or any
22 of the pharmacy Defendants?

23 A. No.

24 Q. Could you give us a brief summary of
25 your educational background, starting with

1 college?

2 A. Sure.

3 I have a Bachelor's degree in
4 criminal justice from Youngstown State
5 University and I obtained that in December of
6 2005.

7 Q. Okay.

8 MR. BARNES: My screen just turned
9 into a green icon.

10 THE TECHNICAL ASSISTANT: I muted
11 the phone. If you two continue to speak, it
12 will go away.

13 MR. BARNES: Okay.

14 Q. Mr. DiFrangia, you got your
15 Bachelor's degree in December of '05. Have you
16 done any graduate work after your undergraduate
17 degree?

18 A. No, not through any type of
19 university; however, I did go through the Peace
20 Officers -- Peace Officers training through
21 Youngstown State University. So sometimes that
22 is considered graduate coursework.

23 Q. Did that result in a certificate or
24 any other certification or license or things of
25 that nature?

1 A. Yes. I obtained a certificate
2 from -- from the training academy at Youngstown
3 State and then I also obtained a certificate
4 from OPOTA for certification.

5 Q. I'm sorry. You said for -- for what
6 certification?

7 A. It's through OPOTA, the Ohio Police
8 Officers Training Association, and that's for
9 just certification of being a police officer.

10 Q. I see.

11 And did you become a police officer
12 after going through this training?

13 A. Yes.

14 Q. And when did you become a police
15 officer?

16 A. June of 2006.

17 Q. And for whom did you become a police
18 officer?

19 A. The city of Canfield.

20 Q. All right. And how long were you a
21 police officer with the city of Canfield, Ohio?

22 A. Through November of 2016.

23 Q. Oh, so ten years?

24 A. Yes.

25 Q. And what generally were your duties

1 in that ten-year time period? Were you always a
2 police officer or were you promoted to detective
3 or things of that nature?

4 A. Yes. I worked as a patrol officer,
5 I worked as a school resource officer for one
6 year, I was assigned to a multi-jurisdictional
7 drug unit for about five and a half years, and
8 ultimately I was promoted to a detective.

9 Q. Okay. How long were you a patrol
10 officer and where were you a patrol officer?

11 A. I was a patrol officer for Canfield
12 Police Department in the city of Canfield, and
13 that designation pretty much lasted from when I
14 was sworn in in 2006 up until February of '16,
15 and then I was promoted to detective in
16 February of '16.

17 Q. Okay. And where is Canfield? What
18 county is that in?

19 A. It's in Mahoning County.

20 Q. Mahoning.

21 And what is the county seat of
22 Mahoning County?

23 A. I think it's Canfield. I'm not --
24 I'm entirely not sure. Sorry.

25 Q. Is Mahoning geographically -- is it

1 on the border of Pennsylvania?

2 A. Yes.

3 Q. And is it above Trumbull?

4 A. No. It's below Trumbull.

5 Q. Right below Trumbull?

6 A. Yes.

7 Q. Did your work cause you to do
8 anything with respect to activities that were
9 going on in Trumbull County?

10 A. Yes. Not very often, but it did.

11 Q. Okay. Did you do any drug work as a
12 patrol officer in that time period, that
13 ten-year time period?

14 A. Yes.

15 Q. As a patrol officer I'm focusing on.
16 Did you do street drugs, that kind of thing?

17 A. Yeah. When I was a patrol officer,
18 assigned -- I was assigned to a
19 multi-jurisdictional drug unit, but, you know,
20 other than that, proactive drug enforcement,
21 you know, just for proactive traffic stops and
22 that sort of thing.

23 Q. I see.

24 While you were working as a
25 Canfield police officer, were you able to

1 observe illegal drug activity in Mahoning -- in
2 or around Mahoning County?

3 A. Yes.

4 Q. What, in your experience, were the
5 types of drug problems you observed as a police
6 officer in that time period?

7 A. It was predominantly heroin and
8 prescription medication, opiates specifically,
9 and cocaine and marijuana.

10 Q. Were you able to -- did you
11 investigate those types of crimes involving
12 heroin, prescription drugs, cocaine and
13 marijuana?

14 A. Yes.

15 Q. Were you able to determine the
16 sources of those types of drugs? Were they
17 coming into the county from outside the county?

18 A. Yes. For the illicit street drugs,
19 they generally did. Your prescription
20 medications, it was typically an individual
21 that was prescribed the medication.

22 Q. Okay. But with respect to heroin,
23 was that coming in from -- were you able to
24 observe as a police officer it coming in from
25 specific sources, like Detroit, Mexico, New

1 Jersey, things like that?

2 A. Yeah. Through our investigations,
3 generally Columbus seemed like a -- a frequent
4 destination that heroin was coming in through,
5 Akron, sometimes New York.

6 Q. Did you ever observe foreign
7 sources, like Chinese fentanyl, Mexican
8 fentanyl, Mexican heroin, things like that?

9 A. Nothing that I could definitively
10 say came from a foreign source.

11 Q. By that you mean a foreign country?

12 A. Yes.

13 Q. And then you said you were a school
14 resource officer for approximately one year?

15 A. Yes.

16 Q. What did that involve and what
17 school were you at?

18 A. I was assigned to Canfield High
19 School, and really it was to, you know, have a
20 presence of the police department within the
21 school, ensure safety of the students and
22 staff, enforce any -- any criminal violations,
23 and assist the school with discipline when
24 needed.

25 Q. Okay. And then after that you were

1 assigned to this multi-jurisdictional drug unit
2 for about five and a half years you said?

3 A. Yes.

4 Q. And what was the name of that drug
5 unit?

6 A. The Mahoning Valley Drug Task
7 Force.

8 Q. And what types of law enforcement
9 personnel were assigned to that task force?
10 Where did they come from?

11 A. They came from different agencies
12 within the county, different police
13 departments. There was also individuals from
14 the FBI, from the ATF, and sometimes different
15 state agencies.

16 Q. What about DEA?

17 A. They never had a person that was
18 assigned to that. We worked with them on
19 occasion, but they didn't have anyone that was
20 assigned to that unit.

21 Q. What was the purpose of putting that
22 unit together?

23 A. To proactively investigate drug
24 trafficking.

25 Q. And what areas did you cover on this

1 Mahoning Valley Drug Task Force?

2 A. Well, predominantly Mahoning
3 County; however, if there was an investigation
4 that would carry over into another county, you
5 know, we would follow it there and assist other
6 counties and other agencies with it.

7 Q. Did any of your investigations ever
8 include Trumbull or Lake Counties?

9 A. Trumbull County, yes. And they
10 were more investigations that I was assisting
11 on, but we -- we would go into Trumbull County
12 for investigations from time to time.

13 Q. And on this drug task force, how big
14 was it in terms of membership? Was it like a
15 dozen, two dozen law enforcement personnel?

16 A. Yeah. I think it was about --
17 about a dozen members.

18 Q. And were there other police officers
19 like yourself on that drug task force?

20 A. Yes.

21 Q. And on that drug task force did you
22 become -- as you did in your prior experience as
23 a police officer, did you become familiar with
24 illegal drugs, illegal drug activity in those
25 jurisdictions?

1 A. Yes. So let me clarify that the
2 experience -- the vast majority of my
3 experience with investigating drugs was from
4 when I was assigned to the drug task force, so,
5 you know, any of the things that I just
6 testified was generally from my experience
7 being assigned to the task force. And I was
8 still a Canfield police officer. That was just
9 my assignment was reporting to the task force
10 several days a week.

11 Q. So those observations you gave us
12 earlier based upon your experience concerning
13 heroin and prescription drugs and cocaine and
14 marijuana, that included your work on the drug
15 task force?

16 A. Correct.

17 Q. While working on the drug task
18 force, did you work with partners on
19 investigations? Were you assigned, for example,
20 a group of two or three of you to certain types
21 of investigations concerning illegal drug
22 activity?

23 A. Yes.

24 Q. Okay. And were you able to
25 successfully prosecute individuals for illegal

1 drug activity while on that task force?

2 A. Yes.

3 Q. Did any of your work on the drug
4 task force involve prescription drugs?

5 A. Yes.

6 Q. And in connection with those types
7 of investigations, did you seek and obtain the
8 assistance of pharmacies and pharmacists to
9 assist in those investigations?

10 A. Yes, when needed.

11 Q. Do you recall the pharmacies that
12 assisted the drug task force as needed?

13 A. Yeah. You know, depending on the
14 circumstance, if we were investigating some
15 sort of deception to obtain or an illegal
16 processing investigation or someone obtaining a
17 large amount of pseudoephedrine, pharmacies
18 were -- you know, all pharmacies in the area
19 were willing to assist us when needed.

20 Q. Would that include the pharmacy
21 Defendants in this case?

22 A. Yes.

23 Q. Giant Eagle, CVS, Rite-Aid,
24 Walgreens, Walmart?

25 A. Yes.

1 Q. All right. Did you ever encounter
2 any resistance by any of the pharmacy
3 Defendants; in other words, saying we're not
4 going to help the drug task force, go away?

5 A. No.

6 Q. Okay. And the type of assistance
7 that they provided, would that include -- would
8 they call you or other members of the drug task
9 force from time to time to provide leads on --
10 on potential illegal drug activity?

11 A. Yes.

12 Q. Do you recall -- I represent Giant
13 Eagle so I'm going to ask first about Giant
14 Eagle. Do you recall Giant Eagle pharmacists
15 providing leads to you or other members of the
16 drug task force?

17 A. Yes.

18 Q. And what about the other pharmacy
19 Defendants; did they, similarly, provide leads
20 to you and other members of the drug task force?

21 A. Yes. I know Rite-Aid did. I can
22 remember some times with Rite-Aid. Walmart.
23 You know, specifically can I recall CVS and
24 Walgreens calling me personally, not that I
25 recall, but I can't say that that didn't happen

1 at some point.

2 Q. And typically what type of leads
3 would they provide? Would it relate to
4 diversion attempts generally related to
5 prescription drugs?

6 A. Yes. The leads varied. They would
7 contact us when they would have a patient come
8 in and present what was deemed to be a
9 fraudulent prescription. They would contact us
10 when they had a prescriber that was prescribing
11 in a manner that may not be -- may not be
12 consistent with other prescribers in the area.

13 Q. I see. So it could relate to either
14 illegal -- potential illegal activity by the
15 patient trying to get the drugs and/or the
16 prescribers who prescribe the drugs?

17 A. Yes.

18 Q. And did these leads result in
19 successful prosecutions of patients or
20 prescribers who were behaving illegally?

21 A. Yes.

22 Q. Now, you said you rose to the level
23 of detective in February of '16. Did you remain
24 on the drug task force now that -- after you
25 became a detective?

1 A. No. My -- my full-time assignment
2 with the task force ended around March of 2016.
3 I was still there on a very limited part-time
4 basis, but from -- around March of 2016 I was
5 promoted to a detective, however, I was working
6 primarily patrol shifts.

7 Q. Were you doing any drug
8 investigation work as a detective?

9 A. Yes. When -- you know, when --
10 when I had an opportunity, and, again, I had a
11 very limited presence at the drug task force,
12 so, you know, I was able to do it on those
13 days, but it was -- it was very limited.

14 Q. Okay. And at some point you became
15 employed by the Ohio Board of Pharmacy, correct?

16 A. Yes.

17 Q. And when was that?

18 A. That was November of 2016.

19 Q. Okay. Why did you go to the Ohio
20 Board of Pharmacy? Opportunity?

21 A. Yeah, just really a better career
22 opportunity.

23 Q. And what position did you take at
24 the board? What was your first position?

25 A. An agent.

1 Q. And are you currently still an
2 agent?

3 A. Yes.

4 Q. So for about four and a half -- not
5 quite four and a half years you've been an agent
6 at the Ohio Board of Pharmacy?

7 A. Yes.

8 Q. Did you go through training to
9 become an agent at the Board of Pharmacy? Did
10 they train you in some way when you got there?

11 A. Yeah. My -- my initial three to
12 four months consisted of a field training
13 program within the board.

14 Q. And who did you field train with?

15 A. Oh, just about -- several --
16 several agents within the board, several of our
17 specialists, and several of the office staff.

18 Q. Did any of your field training
19 include Trey Edwards?

20 A. Yes.

21 Q. All right. By the time you went to
22 work for the board, had you become familiar with
23 the Ohio drug laws involving how they're
24 regulated and drug offenses, things of that
25 nature?

1 A. Yes.

2 Q. And you used the term "agent." Is
3 that a term of art within the Board of Pharmacy
4 or does it differentiate you from other
5 positions like inspectors? And you used the
6 term "specialist." Can you explain for us
7 generally what those different categories mean?

8 A. Sure.

9 So our agents generally come from a
10 law enforcement background, our inspectors
11 are -- they come from a pharmacy technician
12 background, and then our specialists are
13 licensed pharmacists with the background of
14 being a pharmacist.

15 Q. I see. So when you use the term
16 "specialist," you're talking about a board
17 employee who's a licensed pharmacist?

18 A. Yes.

19 Q. And how or why were specialists used
20 in investigations? Why would you need a
21 pharmacist?

22 A. Well, they can provide a lot more
23 clinical knowledge that we, frankly, don't
24 possess as field agents or even specialists.

25 Q. And have you worked with specialists

1 since you arrived at the board?

2 A. Yes.

3 Q. How many specialists does the board
4 have presently?

5 A. I believe seven.

6 Q. And how many inspectors does the
7 board have?

8 A. Well, there's one in Northeast
9 Ohio. I could tell you that definitively. The
10 rest of the state -- I think maybe six, but
11 again, I don't know for sure the rest of the
12 state.

13 - - - - -

14 (Thereupon, Deposition Exhibit 5,
15 Multi-Page Document Entitled "State
16 of Ohio Board of Pharmacy July
17 Board Meeting Presentation,"
18 Beginning Bates Stamp
19 BOP_MDL035385, was marked for
20 purposes of identification.)

21 - - - - -

22 Q. Okay. I'm going to show you a
23 document. It's Exhibit 5 in your second binder.

24 A. Okay.

25 Q. It's marked DiFrangia Exhibit 5.

1 A. Yes.

2 Q. It states on the front "July Board
3 Meeting Presentation."

4 A. Okay.

5 Q. The metadata for this document
6 indicates it's dated sometime in 2017. The
7 reason I mention that is because we can't find a
8 date on it otherwise. But did you attend board
9 meetings for the Board of Pharmacy?

10 A. Yes.

11 Q. And why would you attend board
12 meetings?

13 A. Well, for the most part, they were
14 pretty much mandatory unless you had an illness
15 or some sort of prior scheduled vacation.

16 Q. Okay. And the board is comprised of
17 approximately eight individuals; is that
18 correct?

19 A. Yes.

20 Q. And most of them are -- all of them
21 are pharmacists; am I correct?

22 A. One is a general public individual.

23 Q. Okay. And did you make
24 presentations at the board meetings for the
25 Board of Pharmacy from time to time?

1 A. I don't think I ever have made a
2 presentation for the board meetings.

3 Q. Okay. Go to the second page of
4 Exhibit 5. There's a slide showing compliance
5 and enforcement department overview. Do you see
6 there's kind of an organizational chart starting
7 with the director of compliance and enforcement?

8 A. Yes.

9 Q. You have chief pharmacist, then
10 chief of investigations, administrative
11 assistant, supervisors; then below the chief of
12 investigations you have regional supervisors,
13 four, and then beneath those regional
14 supervisors, you have compliance specialists,
15 six; agents, 18, and inspectors, four.

16 Do you see that?

17 A. Yes, I do.

18 Q. Is that -- is that consistent with
19 your general recollection of how the board is
20 structured in the compliance and enforcement
21 division?

22 A. Yes, that's the correct structure.

23 Q. Okay. And does that refresh your
24 recollection about the approximate number of
25 compliance specialists, which are pharmacists,

1 six, statewide? Do you see that?

2 A. Yeah, at that time in 2017.

3 Q. Okay. And that -- you think it
4 might have changed by adding an additional
5 specialist since then?

6 A. I believe it has, and I think we
7 even had a retirement, so --

8 Q. Okay. I'm just interested in the
9 ballpark. So you have about six to seven
10 pharmacy specialists, about 18 agents as of
11 2017? Does that sound about right?

12 A. Yeah, as of 2017, but again, that
13 number is changing.

14 Q. In what way, up or down?

15 A. Up.

16 Q. How many agents do you think you
17 have now?

18 A. I think we're -- if this was 18 in
19 2017, we're probably in the low 30s now.

20 Q. Oh, wow. That's a significant
21 increase.

22 A. Yes. Since I've started, I kind of
23 was at the beginning cusp of -- of a lot of
24 hiring that has happened.

25 Q. All right. So you're up to about 30

1 agents?

2 A. Give or take, yes.

3 Q. And inspectors, it says four. Is
4 that about right for 2017, and if so, has that
5 increased or decreased since then?

6 A. For 2017, yes, that is accurate,
7 and I think it's gone up since then.
8 I'd say it probably has increased by two.

9 Q. Okay. If you go to the fourth page
10 of this exhibit, two pages after the chart that
11 we just saw, there is a compliance and
12 enforcement map, field staff territory map. Is
13 that accurate? Does that accurately show that
14 the board breaks its staff down into four
15 geographic quadrants in the state of Ohio?

16 A. Yes.

17 Q. Northwest, northeast, southwest and
18 southeast?

19 A. Yes.

20 Q. And personnel are designated to each
21 of those four geographical quadrants?

22 A. Yes.

23 Q. And you're listed on the right as
24 being in the northeast quadrant; is that
25 correct?

1 A. Correct.

2 Q. And that quadrant includes Mahoning,
3 Trumbull and Lake Counties; is that correct?

4 A. Yes.

5 Q. Okay. And the other is -- you have
6 a couple specialists in there, Joann Predina,
7 Katie Stable (phonetic)?

8 A. Katie Stabi.

9 Q. Stabi. These are two pharmacist
10 specialists that assist in your investigations;
11 is that right?

12 A. Yes; however, Joann Predina has
13 retired.

14 Q. And has she been replaced?

15 A. No.

16 Q. Okay. But the agents assigned to
17 this northeast quadrant include you, John
18 Bonish, Trey Edwards, Thomas Williams, Greg
19 Whitney, and an additional agent is Michael
20 Reese but also an inspector, Ginger Redway; is
21 that right?

22 A. As of that time in 2017; however,
23 Michael Reese is no longer with the agency;
24 Ginger Redway, no longer with the agency; Greg
25 Whitney, he has also since retired.

1 Q. Have they been replaced by others?

2 A. Yes. Two -- there's been a few
3 agent positions that have been replaced, but
4 the inspector has not.

5 Q. Okay. If you flip about five pages
6 later, there's a page that has a Bates stamp BOP
7 on the bottom right with the ending digits 393.

8 A. Okay.

9 Q. It says, "Roles and Responsibilities
10 of Specialists, Agents & Inspectors."

11 Do you see that?

12 A. Yes.

13 Q. All right. So again, to reorient,
14 this is a presentation to the Board of Pharmacy.
15 Was the purpose of this presentation, to your
16 understanding, to let the board know what roles
17 each of these types of employees was serving
18 with the board, specialists, agents and
19 inspectors?

20 A. Yes.

21 Q. Okay. If you flip the page, we
22 have -- the next several pages have compliance
23 specialists and then, after that, agents, and
24 then inspectors. I just want to make sure I
25 understand what this information means.

1 For compliance specialists, is this
2 showing the types of investigations and the
3 types of inspections that compliance
4 specialists, the primary duties relate to?

5 A. Yes.

6 Q. Okay. And then the same for agents.
7 As agents your responsibilities included, on the
8 investigation side, criminal investigations,
9 theft of drugs, illegal processing, drug
10 trafficking, deception to obtain dangerous
11 drugs, overdose, suspicious deaths, minimum
12 qualifications of a terminal distributor. I
13 think that's a warehouse distributor. Is that
14 right?

15 A. Yes.

16 Q. All right. Illegal sales and
17 purchases, drug security, impaired pharmacists,
18 interns and technicians, unprofessional conduct,
19 violation of board orders, OARRS complaints, and
20 operating or practicing without a license. Is
21 that -- that's a pretty wide scope of
22 responsibilities in terms of investigations. Is
23 that accurate?

24 A. Yes, that's accurate.

25 Q. Okay. And then the types of

1 inspections you did were pain management
2 facilities, wholesalers, Suboxone clinics
3 (outpatient), virtual wholesalers and
4 manufacturers, third-party logistics companies,
5 dog trainers and retail pharmacies. Those are
6 the types of inspections that came within your
7 field of -- your scope of duties as an agent?

8 A. Correct.

9 Q. What's a pain management facility?

10 A. It would be a prescriber's office
11 that prescribes controlled substances to over
12 50 percent of their patient population.

13 Q. So in the state of Ohio prescribers
14 are allowed to distribute prescriptions right
15 out of their offices?

16 A. Well, typically they're issued by
17 way -- yeah, they'll issue a prescription to a
18 patient and then the patient goes and gets the
19 medication filled from a pharmacy.

20 Q. I see. And do you have actual
21 experience inspecting pain management
22 facilities?

23 A. Yes.

24 Q. Can you identify any of the pain
25 management facilities that you inspected or you

1 have inspected?

2 A. As far as the doctors' offices or
3 the doctors?

4 Q. Well, I guess that would be -- I'm
5 not thinking about it correctly. You describe
6 these as essentially prescriber offices, pain
7 management facilities. I was thinking of pain
8 management clinic, but that's probably why we're
9 not on the same page.

10 Are you familiar with the term
11 "pain management clinic"?

12 A. Well, we classify pain management
13 clinic as a -- as a doctor's office, pain
14 management facility -- kind of classify it all
15 together.

16 Q. Okay. And you -- you've actually
17 done those inspections of those -- these pain
18 management facilities and clinics? I'll just
19 add "and clinics" on there.

20 A. Yes, I have.

21 Q. In your experience with the board or
22 with your prior experience as a detective and
23 police officer, do you recall any pain
24 management facilities or clinics being
25 investigated and prosecuted?

1 A. Yes.

2 Q. Which ones do you recall?

3 A. There was a doctor -- Dr. Paloski,
4 he was licensed as a pain management facility.
5 He was in Mahoning County.

6 Q. Okay. Any others that you remember?

7 A. Yes. There was a Dr. Escobar. He
8 was also in Mahoning County. He was a pain
9 management clinic.

10 Q. Any others?

11 A. There was an investigation. My end
12 is closed, however, I'm not sure of other
13 investigating partners that I had regarding
14 this physician, but he was in Trumbull County.
15 His name was Dr. Veres.

16 Q. How do you spell that name?

17 A. V-E-R-E-S.

18 Q. Veres. And he was in Trumbull
19 County?

20 A. Yes.

21 Q. And was he also a pain management
22 clinic?

23 A. He was.

24 Q. And your investigation closed on
25 him?

1 A. Correct.

2 Q. And how did it close? Was he
3 prosecuted?

4 A. He -- he had surrendered his DEA
5 certificate.

6 Q. Which meant what, he could no longer
7 prescribe medicine?

8 A. Well, he could no longer prescribe
9 controlled substances. He still has an active
10 medical license from the medical board, he
11 could still practice as a physician, but he
12 cannot prescribe any controlled substances
13 without a DEA certificate.

14 Q. And why did he lose his right to
15 prescribe controlled substances? What was he
16 doing?

17 A. Well, he voluntarily gave it up.
18 You know, there was a -- there was an
19 investigation into his prescribing by the
20 pharmacy board and also other agencies, state
21 and federal agencies, and a subpoena was issued
22 for some patient files by the DEA, and then
23 through negotiations with his -- with the
24 United States Attorney, that was -- that was
25 the outcome of the case.

1 Q. I see. So he surrendered his
2 license, but how would you describe the conduct
3 that he was -- that led to his having to
4 surrender his license? What was he doing? Was
5 he issuing prescriptions that he shouldn't have
6 or bad quantities or to fake patients?

7 A. High quantities of opiate
8 prescriptions, a large volume of patients,
9 things of that nature, some combinations of
10 medications that were -- that were suspicious.

11 Q. Was that investigation the result of
12 a lead from one of the pharmacy Defendants?

13 A. I don't know. I don't know if we
14 ever got a lead from any of the pharmacy
15 Defendants on it.

16 Q. Okay. Any other pain management
17 facilities or clinics that you recall being
18 involved with inspecting and/or investigating?

19 A. As far as investigations go, those
20 are the -- those are the three primary ones
21 that -- that I can think of. Inspections, I
22 would inspect each facility routinely.

23 Q. And did that sometimes lead to
24 prosecutions?

25 A. No. The inspection was just -- the

1 inspection was just an administrative process.
2 You know, I would go in. There was several
3 areas of the facility that I would check. I
4 would meet with the prescriber and/or the
5 office manager, but it was clearly an
6 administrative action, and it's just to ensure
7 that all the rules and regulations are being
8 followed as far as we can tell.

9 Q. Okay. Getting back to this
10 presentation to the board, you also inspected
11 wholesalers; is that right?

12 A. Yes.

13 Q. And what would that involve? Would
14 that include a warehouse where drugs were
15 stored? Did you inspect those types of
16 facilities?

17 A. Oftentimes it would be a warehouse,
18 yes.

19 Q. And Suboxone clinics, outpatient,
20 you inspected those from time to time?

21 A. Yes.

22 Q. And also virtual wholesalers and
23 manufacturers. What is that? What is a virtual
24 wholesaler and manufacturer?

25 A. Well, a drug manufacturer is just a

1 facility that's, you know, manufacturing any
2 type of dangerous drugs. But I've never
3 inspected a drug manufacturer facility. I
4 don't have any that really lie in my area,
5 so --

6 Q. Okay. What is a virtual wholesaler,
7 though?

8 A. A virtual wholesaler is -- you
9 know, I'm not exactly one hundred percent sure
10 of the definition of it, but it has something
11 to do with a third-party wholesaler, but I
12 can't -- I don't have the one hundred percent
13 definition for you of it.

14 Q. Okay. And then after -- we'll skip
15 dog trainers, although that's kind of
16 interesting. Retail pharmacies, you inspected a
17 lot of those?

18 A. Yes.

19 Q. And did you inspect and have you
20 inspected many of the stores, retail pharmacy
21 stores owned by the pharmacy Defendants in this
22 case?

23 A. Yes.

24 Q. A couple pages -- the next page
25 lists the duties of an inspector, the types of

1 investigations that they do and the types of
2 inspection -- and the types of inspections that
3 they do; is that right?

4 A. Yes.

5 Q. So inspectors also inspect retail
6 pharmacy locations besides nursing homes and
7 clinics and doctors' offices, et cetera; is that
8 right?

9 A. Yes.

10 Q. So there was a little bit of overlap
11 between what you as an agent did and what
12 inspectors did; is that right?

13 A. Yes.

14 Q. All right. And then the next page
15 of this presentation shows -- it's captioned
16 "Inspections." The next page is the inspection
17 standards. So in this presentation to the
18 board, there's a statement of the purpose of
19 inspection standards, and I'll just read it
20 because I want to ask you if you agree with it.
21 "The purpose of inspection standards is to
22 ensure that all licensed distributors of
23 dangerous drugs (DDD) are inspected on a routine
24 and consistent basis. The timing for conducting
25 these DDD inspections will be based on the known

1 safety concerns associated with the individual
2 license types and business classes. The board
3 also expects that the inspection process will be
4 sufficient to ensure all major areas of a DDD
5 location are evaluated over a clearly defined
6 period of time."

7 Is that how you understood the
8 purpose of inspections by the board, including
9 the types of inspections we just went over?

10 A. Yes.

11 Q. In the middle there, there's a
12 reference to the timing for conducting these
13 inspections being based upon the known safety
14 concerns associated with the individual license
15 types and business classes. What does that mean
16 to you as an agent?

17 A. Well, there's certain facilities
18 that we try to inspect, and we put like a, you
19 know, every 12 months, every year you want to
20 get in there and conduct an inspection.

21 Q. Okay. Are there certain facilities
22 that get inspected more and others that get
23 inspected less from the board's perspective?

24 A. Yes. As far as, you know, our
25 general concern is -- the places that we're in

1 the most, such as like a Suboxone clinic, a
2 pain management clinic, a retail pharmacy,
3 those are typically you want to try and inspect
4 them every 12 months.

5 Q. Okay. And is the reason for that --
6 well, let me just ask you, what are the reasons
7 for that? Why inspect them more than other
8 places?

9 A. Well, probably because, you know,
10 obviously, to start with a pharmacy, it's a --
11 you know, they're dispensing dangerous drugs.
12 There's, you know, a lot of public safety
13 interest that go along with that. You know,
14 for a pain management clinic, these are
15 doctors' offices that are prescribing a large
16 amount of controlled substances, typically
17 opiates. So, again, I think there's a --
18 there's a communal interest in ensuring that
19 those are inspected and, you know, all the
20 rules are being followed. And the same thing
21 with really Suboxone clinics, because they're
22 prescribing a controlled substance to assist in
23 -- assist in with individuals that are addicted
24 to opiates. So I think there's -- there's a
25 heightened priority on those because there's a

1 public safety interest and a community interest
2 in those facilities to be inspected regularly.

3 Q. I see. And so you try to inspect
4 those facilities, including retail pharmacies,
5 about once a year?

6 A. Try to, depending on caseload,
7 casework, and, well, most recently, a pandemic.

8 Q. And are these inspections
9 unannounced; in other words, you just show up
10 and you don't give these locations advanced
11 warning, like get ready, we're coming next week?

12 A. Most -- most often they are
13 unannounced.

14 Q. And is there an investigative reason
15 for that?

16 A. I think it's you want to capture a
17 true sense of how they're conducting their
18 daily business.

19 Q. Okay. And indeed on this next page
20 of this Exhibit 5 there's a reference to
21 inspections; down at the bottom, "Pain
22 management facilities, every 12 months." That's
23 pretty much what you just told us; is that
24 right?

25 A. Yes.

1 Q. Okay. And then the next -- two
2 pages after that, Bates number ending in 35401,
3 there's -- it looks to be the different types of
4 results of inspections. You could either get a
5 verbal warning or you would require a written
6 response or a citation would be issued plus a
7 written response, or you could get suspended.
8 Those are the four types of outcomes of an
9 inspection; is that right?

10 A. Yes.

11 Q. All right. Then down into the
12 ensuing pages of these -- of this presentation,
13 there's a section called "Audit Process,"
14 beginning on 35407. Now, is an audit different
15 from an inspection?

16 A. Yes.

17 Q. How so? What's the difference
18 between an audit and an inspection?

19 A. So what we generally do with an
20 audit is we -- we basically use our independent
21 personnel and we will conduct counts of their
22 medications, when needed, to determine if there
23 is a greater loss or a small loss or just to
24 determine the amount of medication that they
25 are or are not accountable for.

1 Q. Now, on page 35408, "Audit Process
2 Discussion," it says, "A mandatory audit is
3 conducted in the event that a pharmacist or
4 intern is responsible for the loss of controlled
5 substances or it is determined that there was a
6 large or significant loss."

7 Is my understanding correct that an
8 audit would be triggered in those
9 circumstances; that's typically when you do an
10 audit, when you have a major loss or a large
11 loss or a pharmacist or an intern is actively
12 involved with diversion?

13 A. Yeah, generally that's the guiding
14 principle for the audit.

15 Q. Okay. And so are a lot more
16 inspections done than audits because of that?

17 A. Yes.

18 Q. Okay. On page 35410 there's a
19 listing of investigations conducted. It says,
20 "SOBOP in the news." What does SOBOP stand for?

21 A. State of Ohio Board of Pharmacy.

22 Q. Okay. Is this a listing as of 2017
23 of some successful prosecutions of doctors and
24 pharmacists in the state or by the board as of
25 that point in time?

1 A. Yes.

2 Q. Were you involved in any of these
3 investigations and prosecutions?

4 A. Yes. The Dr. Paloski
5 investigation.

6 Q. That's the one you referred to
7 earlier?

8 A. Yes.

9 Q. What about Jacklyn Cropper, a
10 pharmacist in Trumbull County; were you involved
11 in that?

12 A. No.

13 Q. Do you have any knowledge about that
14 investigation and prosecution other than what's
15 listed here?

16 A. I think I'm familiar with it. It
17 was before I was with the board, but I had no
18 involvement with it.

19 Q. Okay. The last section of this
20 presentation deals with Rx alerts -- Rx eAlerts
21 actually. What is an Rx eAlert?

22 A. I think it was a system that was
23 set up to -- to alert pharmacies or pharmacists
24 of fraudulent prescriptions, but it's -- it's
25 not implemented. I don't think it's ever been

1 implemented.

2 Q. Okay. In your experience -- and
3 you've outlined it well for us -- what are the
4 types of diversion that you've seen of
5 prescription drugs? What form of -- forms of
6 diversion have you seen as a police officer and
7 as a board agent?

8 A. I think I've seen -- seen instances
9 where people will illegally process a
10 prescription to obtain medication, where they
11 will deceive prescribers to obtain medication,
12 where an individual will, maybe if they have
13 prescriptive authority, prescribe medication to
14 themselves, a pharmacy -- a pharmacist or
15 pharmacy technician will steal medication from
16 the pharmacy, and ultimately when a prescriber
17 is prescribing medication that's outside the
18 normal scope of their practice.

19 Q. Have the forms of diversion changed
20 over time in your law enforcement experience? I
21 mean, do criminals respond and evolve as
22 investigations respond and evolve?

23 A. Yeah, I think they do. You know,
24 back in the early 2000s deception to obtain a
25 dangerous drug happened much more than it does

1 now.

2 Q. So that type of diversion has
3 decreased. What, in your experience, is the
4 cause of the decrease?

5 A. My opinion is that it's due to
6 pharmacists and prescribers utilizing OARRS.

7 Q. And so the criminal activity or the
8 deceptive activity has moved from that type of
9 deception to new forms of deception; is that
10 right?

11 A. I don't know that there's really
12 any new forms, but deception to obtain, seeing
13 multiple prescribers, has been on the decrease
14 ever since the early 2000s.

15 Q. And you attribute that to OARRS, the
16 OARRS --

17 A. Yes. Yes.

18 Q. What about other types of diversion?
19 Have you seen trends increase or decrease over
20 time or change over time?

21 A. Yeah. I think -- I personally
22 think that prescribing of opiates has decreased
23 quite a bit probably in the past ten years.

24 Q. And is it the same reason? Is it
25 the prevalence of the OARRS database?

1 A. Yes. I think it's that and it's
2 also, you know, prescribers see other
3 prescribers get in trouble for doing something
4 that they do similar and, frankly, they don't
5 want it to happen to them.

6 Q. Okay. And so what are the current
7 primary forms of diversion? If those types of
8 diversions and prescribing of opiates have
9 decreased, what are you seeing now as an agent?
10 What are the problem areas?

11 A. The thing that I deal with the most
12 is theft of drugs, and that can be -- again, it
13 could be a pharmacist, pharmacy technician, a
14 nurse, it could be a doctor, it could be really
15 anyone that has access to any type of drug
16 stock.

17 Q. Okay. And in your current position
18 do you get into investigations of, you know,
19 major drug trafficking, like, you know, fentanyl
20 coming in from out of state, things of that
21 nature, or are you more in the pharmacy
22 regulatory area now?

23 A. Yes, primarily pharmacy regulatory.
24 As far as fentanyl, there's -- there's still a
25 pharmaceutical grade fentanyl patch, which

1 would fall into the regulatory issue with the
2 pharmacies, but there's also the, you know,
3 illicit fentanyl that's coming from some sort
4 of, you know, out-of-country clandestine lab,
5 so with that type of fentanyl we don't get
6 involved in those types of -- those types of
7 investigations.

8 Q. I see. In your investigations of
9 these doctors like Dr. Paloski -- Paloski I
10 should say -- do they take a long time, years,
11 for example?

12 A. Generally, yes.

13 Q. And in those investigations do you
14 typically need to pull in a specialist, a
15 pharmacist specialist at your agency in order to
16 assist from the clinical aspects of the
17 investigation?

18 A. We do from time to time.

19 Q. Approximately how many inspections
20 of retail pharmacy locations have you conducted,
21 Agent DiFrangia, in your experience, four and a
22 half years of experience at the board?

23 A. Total, I would say over a hundred.

24 Q. And have any of those resulted in
25 criminal investigations of the pharmacy or the

1 pharmacists resulting in successful
2 prosecutions?

3 A. No. The inspections are generally
4 just an administrative review. You'd have to
5 really kind of see something really egregious
6 that an inspection would transmit into a
7 criminal proceeding.

8 Q. I see. Before you go in to do an
9 inspection of a pharmacy, do you look at the
10 past inspection history of the pharmacy or maybe
11 the last couple of inspections?

12 A. Yes.

13 Q. And why do you do that?

14 A. I want to see who was there last.
15 I don't want to go to a pharmacy that, you
16 know, someone conducted an inspection last
17 month on, and then I also want to see if there
18 was any -- any corrective action given last
19 time, because those are areas that I will make
20 sure that I review to ensure that, you know,
21 they have responded adequately to the
22 corrective action.

23 Q. In terms of the two counties that
24 are the Plaintiffs in this case, Lake and
25 Trumbull County, have you done any inspections

1 in Lake County?

2 A. I don't think so, not that I -- not
3 that I recall.

4 Q. But you have performed inspections
5 in Trumbull County?

6 A. Yes.

7 Q. Have you performed a lot of
8 inspections in Trumbull County? For example, I
9 know that you've inspected four Giant Eagle
10 pharmacies in Trumbull County. Is that about
11 right?

12 A. Well, from what I saw in the
13 packet, there's four reports; however, some of
14 those aren't inspections. Those are merely
15 property receipts.

16 Q. Okay. And what is a property
17 receipt? Is that something where you go in and
18 you take records from the pharmacy for your
19 investigations?

20 A. Yes.

21 Q. All right. So back to my question.
22 You've done inspections in Trumbull County you
23 told us. I'm just trying to get a sense of --
24 did you inspect all of the pharmacy defendant
25 stores, Giant Eagle, Rite-Aid, Walmart,

1 Walgreens and CVS?

2 A. In Trumbull County?

3 Q. Yes.

4 A. No, I did not inspect every single
5 one of those in Trumbull County or even some of
6 those pharmacies, like a Walmart in Trumbull
7 County I've never conducted an inspection at.

8 Q. That would be another agent in the
9 northeast region that would do that?

10 A. No. It would be me -- it would be
11 my responsibility; however, I just have never
12 gone into a Walmart in Trumbull County to
13 conduct an inspection.

14 Q. Have you ever gone into a Walmart to
15 inspect?

16 A. Yes. I have when I was training,
17 when I was still doing training.

18 Q. Okay. Before -- besides looking at
19 the past inspection reports, do you take a look
20 at OARRS, the OARRS database, for the pharmacy
21 to get a sense of volume, types of drugs being
22 dispensed, things of that nature?

23 A. Typically with just a random
24 inspection, no, I do not inspect -- I do not
25 review OARRS.

1 Q. All right. But the board -- you
2 know that the pharmacies are reporting on a
3 daily basis into the OARRS database?

4 A. Yes.

5 Q. So the board -- any time an
6 inspection occurs, the board has the ability to
7 check that pharmacy location's dispensing
8 activities for all drugs before going in for an
9 inspection; is that right?

10 A. Yes. We have the ability to.

11 Q. Okay. Are you familiar with the
12 Ohio Administrative Code, the regulations
13 governing pharmacies and pharmacists?

14 A. Yes. Which code -- which code
15 specifically are we discussing?

16 Q. I'm talking about the Administrative
17 Code Sections 4729 related to pharmacies and
18 pharmacists.

19 A. Yes.

20 Q. Okay. Is that part of your role as
21 an agent, to be familiar with those regulations?

22 A. Yes.

23 Q. Okay. And you know that those
24 regulations have certain requirements. One is
25 called the security requirement, to have

1 effective and approved controls and procedures
2 to deter and detect theft and diversion of
3 dangerous drugs?

4 A. Yes.

5 Q. All right. And that's a regulatory
6 requirement in the Ohio Administrative Code,
7 correct?

8 A. Yes.

9 Q. And according to those provisions,
10 pharmacies must be in substantial compliance
11 with those provisions based upon a multitude of
12 factors, including the type of activity being
13 conducted, the nature of the location, and other
14 factors; is that right?

15 A. Yes.

16 Q. And so when you did your
17 inspections, was one of the purposes of your
18 inspections to make sure that the pharmacists --
19 pharmacies were complying with that security
20 requirement?

21 A. Yes.

22 Q. Okay. Did you work from time to
23 time with pharmacy loss prevention departments
24 for any of the pharmacy Defendants?

25 A. Yes.

1 Q. And first I'll ask about Giant
2 Eagle. Did you work with Giant Eagle's loss
3 prevention department, and specifically a
4 gentleman by the name of Rick Shaheen, who is in
5 charge of Giant Eagle's loss prevention --
6 pharmacy loss prevention department?

7 A. Yes, I've worked with Mr. Shaheen.

8 Q. And with respect to the other
9 pharmacy Defendants, did you work with their
10 loss prevention departments?

11 A. I have -- yes, I have. Walmart,
12 there was -- he was a district pharmacy manager
13 that I have worked with, but as far as a loss
14 prevention person, that would just be like the
15 store-level person that I've worked with on
16 occasion.

17 Q. Okay. Any of the other pharmacy
18 Defendants that you can recall?

19 A. Yes. Each of the other pharmacy
20 Defendants I have worked with their loss
21 prevention, their pharmacy loss prevention
22 personnel.

23 Q. Did you view it as a good internal
24 control for the pharmacy Defendants to even have
25 a loss prevention department?

1 A. Yes.

2 Q. How so? Why was that a good
3 internal control?

4 A. Well, they're adhering to our rules
5 and, you know, you've got a pharmacy that's
6 full of several different drugs, and not even
7 just controlled drugs and opiates, but, you
8 know, you have expensive medication, and I'm
9 sure everyone has a vested interest to make
10 sure that there's accountability for all that,
11 not -- you know, let alone not to mention the
12 issues of some of these drugs are extremely
13 addictive and we want to ensure that they're
14 being dispensed to an individual pursuant to a
15 prescription.

16 Q. I see. And do the pharmacy
17 Defendants' loss prevention departments provide
18 leads to you from time to time of diversion
19 activities or things to investigate?

20 A. Yes.

21 Q. Specifically -- I'll talk about
22 Giant Eagle first. Do you recall Mr. Shaheen
23 calling you from time to time and telling you
24 about specific issues that had arisen in certain
25 pharmacies in terms of potential diversion

1 activities?

2 A. Yes.

3 Q. And were those good leads in the
4 sense that he was, you know, being cooperative
5 with you and initiating law enforcement
6 involvement by saying we've got X problem at Y
7 pharmacy, we want you to be involved?

8 A. Yes.

9 Q. Okay. And was that the same for the
10 other pharmacy Defendants, their loss prevention
11 heads or members would, similarly, provide leads
12 to you and the other board members related to
13 diversion activities?

14 A. All except for Walmart. I don't
15 think I've ever had an instance of any type of
16 diversion regarding a Walmart employee or -- I
17 take that back. I have been notified in my
18 prior career of improper prescribing by a
19 Walmart pharmacist and pharmacy tech. So I
20 stand corrected. I would say everyone has
21 contacted me at some point within my entire
22 career.

23 Q. Did that -- did you view that type
24 of activity, being contacted by the pharmacy
25 Defendants, to be a positive indication to you

1 of pharmacies attempting to comply with the
2 rules by engaging with agents at the board and
3 providing leads and notice of potential
4 diversion?

5 MR. WEINBERGER: Objection.

6 A. Yes.

7 Q. With respect to the interactions
8 with the Giant Eagle loss prevention department,
9 do you recall any specific examples of Rick
10 Shaheen providing leads to you concerning
11 activities at Giant Eagle pharmacies?

12 A. Yes. We've -- him and I have
13 investigated a few individuals that were
14 stealing drugs from pharmacies. I've requested
15 his assistance on several other investigations
16 regarding, you know, a video for suspects of
17 illegal processing or anything of that nature,
18 or even sometimes I've asked for information
19 of, you know, Giant Eagle Advantage cards that
20 was used to purchase a fraudulent prescription.

21 Q. Okay. And did Mr. Shaheen -- did
22 you find him to be competent and -- as an
23 investigator himself?

24 A. Yes.

25 Q. Did he assist you from time to time

1 in setting up video surveillance to detect
2 illegal activities?

3 A. Yes.

4 Q. And did that result in successful
5 investigations and prosecutions of individuals?

6 A. Yes.

7 Q. And did he provide, when requested,
8 Giant Eagle Advantage Card information to assist
9 in your investigations?

10 A. Yes.

11 Q. Do you recall any notable incidents
12 that you worked with Mr. Shaheen involving
13 illegal activities? Does anything come to mind?

14 A. We've had several cases and he's
15 helped me out. I had -- had a doctor that was
16 writing prescriptions to his wife for
17 controlled substances. I believe he provided
18 the video for that. And, you know, recently I
19 had a physician that was doing something
20 similar, and he provided the Advantage Card
21 information. He's contacted me countless
22 amounts of times when his pharmacists have --
23 have found an illegal prescription or a
24 fraudulent prescription. Generally, depending
25 on the instance, I direct them to -- I direct

1 them to local law enforcement, but we've also
2 investigated pharmacy technicians that have
3 been diverting drugs, and, you know, him and I
4 have successfully interviewed them and
5 successfully obtained, you know,
6 acknowledgments of individuals doing that
7 activity.

8 Q. I see.

9 In your engagements with Rick
10 Shaheen and the loss -- Giant Eagle loss
11 prevention department, did you find them to be
12 cooperative and proactive in attempting to
13 avoid diversion and investigate and prosecute
14 diversion?

15 A. Yes.

16 Q. Would the same be true of the other
17 pharmacy Defendants?

18 A. Yes.

19 Q. Do you recall at any time ever
20 believing that any of the pharmacy Defendants
21 were causing diversion themselves?

22 A. Could you rephrase that?

23 Q. Sure, and I'll break it down.

24 You gave us a nice description of
25 your work with Rick Shaheen and the Giant Eagle

1 loss prevention department. My follow-up
2 question is, did you at any time believe that
3 Giant Eagle was itself violating any of the
4 pharmacy rules and regulations itself and
5 causing diversion itself?

6 MR. WEINBERGER: Objection.

7 Q. You can answer.

8 A. Okay. No. There was nothing that
9 I -- that I could think of that led me to
10 believe that.

11 Q. What about with respect to the other
12 pharmacy Defendants?

13 MR. WEINBERGER: Objection.

14 A. And, again, I -- I -- you know,
15 there's, again, nothing that comes to mind for
16 them.

17 - - - - -

18 (Thereupon, Deposition Exhibit 3,
19 E-Mail String, Beginning Bates
20 Stamp LAKE000068980, was marked for
21 purposes of identification.)

22 - - - - -

23 Q. I'm going to direct your attention
24 to DiFrangia Exhibit 3, which is at the end of
25 your second binder. It's an e-mail marked

1 LAKE-68980. Have you had a chance to look at
2 that, sir?

3 A. Yes.

4 Q. There's a reference there to a
5 Dr. Thomas Detesco, D-E-T-E-S-C-O.

6 A. Yes.

7 Q. Were you involved in investigation
8 of Dr. Detesco?

9 A. No, not in the investigation.

10 Q. All right. But you were e-mailing
11 about him and you state that "He is retired from
12 practicing in the Youngstown area, however his
13 DEA credentials are still active and have been
14 compromised." What did you mean by that in this
15 e-mail?

16 A. That someone had obtained his DEA
17 credentials and basically were issuing
18 prescriptions without his -- without his
19 knowledge or without his authorization.

20 Q. So that's a type of diversion
21 itself, correct?

22 A. Yes. Yes.

23 Q. At the end of that e-mail you say
24 that -- there's a reference to coming from
25 Detroit.

1 Do you see that?

2 A. Yes.

3 Q. What did you mean there? What does
4 that mean?

5 A. So what this -- this instance, from
6 what I recall, there was a state trooper I
7 spoke with that had stopped a vehicle and the
8 vehicle had several of these blank
9 prescriptions utilizing this prescriber's name
10 and prescribing credentials, and the vehicle
11 was supposedly coming from Detroit, vehicle and
12 its occupants.

13 Q. I see.

14 In your experience at the board or
15 prior as a detective and patrolman, do you have
16 any experience with illegal drugs coming in
17 from Detroit?

18 A. Yes.

19 Q. Was that a problem in Trumbull or
20 Lake Counties?

21 A. I think for Trumbull it was, but
22 most of our investigations did not -- did not
23 have a Trumbull County nexus when I was a
24 policeman or when I was with the drug task
25 force, and, you know, these were kind of like

1 fractions that -- from what I recall at the
2 time, there was a Warren to -- Warren, which is
3 in Trumbull County, a Warren to Detroit nexus
4 for -- for drug trafficking, but mostly within
5 Mahoning County it was typically Akron,
6 Columbus, New York, Atlanta even, it was those
7 types of major hubs that seemed to be supplying
8 most of the individuals we were investigating.

9 Q. Okay. Let me ask you this: When
10 you would begin an investigation of a doctor for
11 whatever reason, would you advise the pharmacies
12 in the area to stop filling his prescriptions,
13 his or her prescriptions?

14 A. No.

15 Q. Why not?

16 A. Well, a pharmacist has their --
17 they have to exercise their own -- their own
18 professional judgment in dispensing
19 prescriptions, which I don't have any of their
20 education, their clinical background or, you
21 know, really the ability to provide them any of
22 that professional judgment. So I leave the
23 judgment on to them, but I -- you know, that's
24 primarily the driving force for why I don't
25 advise them to or not to fill prescriptions.

1 Q. Does it have anything to do with not
2 wanting to tip off the doctor that he's under
3 investigation?

4 MR. WEINBERGER: Objection.

5 Q. You can answer.

6 A. That -- that's -- that is a typical
7 outcome that could happen; however, again, I
8 leave it up to them. I tell them utilize your
9 professional judgment. If they have concerns
10 with the amount of opiates and they decide
11 that, you know, there's -- they don't want to
12 dispense the medication, it's completely on
13 their -- their professional judgment to do so.

14 Q. Okay. And, in your experience, that
15 involves a multitude of factors, is that
16 correct, not only just data but also other
17 things that the pharmacists will consider?

18 MR. WEINBERGER: Objection.

19 Q. Is that right?

20 MR. WEINBERGER: Objection.

21 A. Yes, that's correct.

22 Q. Okay. Do you recall an
23 investigation of a doctor I believe by the name
24 of Skiffey, S-K-I-F-F-E-Y?

25 A. Yes.

1 Q. Were you involved in that
2 investigation?

3 A. Yes.

4 Q. What -- let me ask this: Where is
5 Dr. Skiffey located, his practice?

6 A. It's in Niles, Ohio, which is in
7 Trumbull County.

8 Q. And when did you become involved
9 with the Dr. Skiffey investigation?

10 A. That was April of 2019.

11 Q. And is that an ongoing investigation
12 or is that concluded?

13 A. It's concluded.

14 Q. How did it conclude?

15 A. Well, the suggested criminal
16 portion is still with the Trumbull County
17 Prosecutor's Office. As of this date, he
18 hasn't been prosecuted criminally, but I have
19 handed my investigation over to them.

20 Q. I see.

21 And what did your investigation
22 reveal about Dr. Skiffey?

23 A. He had a live-in girlfriend that he
24 was prescribing a regular amount of Valium and
25 some occasional opiates to, and after

1 interviewing him, he failed to document the
2 vast majority of those prescriptions within her
3 patient file.

4 Q. I see.

5 Was that investigation open as a
6 result of a tip or a lead from any of the
7 pharmacy Defendants?

8 A. No. That was actually a complaint
9 from his girlfriend's family members.

10 Q. And did you obtain property from a
11 couple of Giant Eagle pharmacies in connection
12 with that investigation?

13 A. Yes.

14 - - - - -

15 (Thereupon, Deposition Exhibit 6,
16 State of Ohio Board of Pharmacy
17 Property Receipt, dated September
18 18, 2019, Beginning Bates Stamp
19 BOP_MDL2796412, was marked for
20 purposes of identification.)

21 - - - - -

22 (Thereupon, Deposition Exhibit 8,
23 State of Ohio Board of Pharmacy
24 Property Receipt, dated September
25 18, 2019, Beginning Bates Stamp

1 BOP_MDL2796570, was marked for
2 purposes of identification.)

3 - - - - -

4 Q. Is that shown on Exhibits 6 and 8?
5 DiFrangia Exhibit 6 and DiFrangia Exhibit 8, are
6 these receipts showing you going to Giant Eagle
7 pharmacies and obtaining pharmacy records,
8 things of that nature?

9 A. Yes. These are -- this is
10 documentation of me seizing those original
11 prescriptions.

12 Q. I see.
13 And you wanted those prescriptions
14 in order to prosecute him?

15 A. Yes.

16 Q. Dr. Skiffey?

17 A. Yes.

18 - - - - -

19 (Thereupon, Deposition Exhibit 4,
20 Consent Agreement Between James J.
21 Skiffey, DDS and the Ohio State
22 Dental Board, was marked for
23 purposes of identification.)

24 - - - - -

25 Q. Okay. And is Exhibit 4 in the

1 binder, DiFrangia Exhibit 4, one of the results
2 of your investigation of Dr. Skiffey?

3 A. Yes, that is.

4 Q. And did Dr. Skiffey surrender his
5 DEA registration as part of this agreement?

6 A. Yes, he did. He surrendered his
7 DEA certificate.

8 Q. Did he do anything else besides
9 surrender his certificate, to your recollection?

10 A. No. He might have had some
11 additional penalties through the dental board,
12 but as far as I can recall, he surrendered his
13 DEA certificate.

14 - - - - -

15 (Thereupon, Deposition Exhibit 2,
16 E-Mail String, Beginning Bates
17 Stamp TRUM001765557, was marked for
18 purposes of identification.)

19 - - - - -

20 Q. Okay. Look at Exhibit 2, DiFrangia
21 Exhibit 2 in your binder. It appears to be some
22 e-mail communications between you and I think
23 it's a prosecutor; is that right?

24 A. Yes.

25 Q. And includes Dr. Skiffey and two

1 others, Donna George and a pharmacist by the
2 name of Alan Mike?

3 A. Yes.

4 Q. And so these are pending criminal
5 prosecutions as of May and June of 2020?

6 A. Correct, and they're still pending.

7 - - - - -

8 (Thereupon, Deposition Exhibit 7,
9 Barricade Inspection, was marked
10 for purposes of identification.)

11 - - - - -

12 Q. Now, Exhibit 7 in your binder
13 references a so-called barricade inspection of a
14 Giant Eagle pharmacy on Elm Road in Warren,
15 Ohio; is that right?

16 A. Yes.

17 Q. What is a barricade inspection?

18 A. So it's generally to just check
19 the -- check the barricade, which consists of
20 the storage of the records outside of the
21 pharmacy, and then the actual outside
22 barricade, which, as you may have seen before,
23 it's a cage sometimes that comes down,
24 depending on the pharmacy. But, you know, we
25 check the external locks, check the surrounding

1 area, ensure only the people that have access
2 are the people by law that can have access to
3 the pharmacy.

4 Q. I see in this inspection on page 3
5 of 4 you mention in this report that Giant Eagle
6 store 1419 was the victim of a possible breaking
7 and entering during May of 2017 through a roof
8 of an adjoining business.

9 Do you recall that?

10 A. Yes.

11 Q. So is that something that happens
12 from time to time, that type of breaking and
13 entering, going through roofs of businesses?

14 A. Yes.

15 Q. Did Giant Eagle cooperate with
16 investigation -- or, I'm sorry, this inspection
17 and anything related to the -- any loss related
18 to the breaking and enterings?

19 A. Yes. From what I recall, they
20 contacted me and asked me to come out and take
21 a look.

22 Q. Do you recall investigating a doctor
23 by the name of Prommersberger?

24 A. Yes.

25 Q. He was a podiatrist; is that right?

1 A. Yes. He still is a podiatrist.

2 Q. Okay. How was that investigation
3 started? Were you provided a lead from
4 somebody?

5 A. Yes, I was provided -- we were
6 provided leads and -- leads, various types of
7 leads.

8 - - - - -

9 (Thereupon, Deposition Exhibit 10,
10 James E. Prommersberger, DPM Search
11 Warrant, with Attachments,
12 Beginning Bates Stamp
13 BOP_-MDL1191777, was marked for
14 purposes of identification.)

15 - - - - -

16 Q. All right. Did -- if you look at
17 page 6 of Exhibit 10, DiFrangia Exhibit 10, this
18 is an affidavit and search warrant for James E.
19 Prommersberger, DPM for his facility at Advanced
20 Arthroscopic Foot & Ankle Associates, Inc. in
21 Boardman, Ohio; is that right?

22 A. Yes.

23 Q. Is this your search warrant
24 affidavit?

25 A. Yes, it was mine, and there was

1 another agent, him and I worked on this
2 investigation together, and then we had someone
3 that was actually -- we had a law enforcement
4 officer that was the affiant.

5 Q. I see. And this is dated -- I'm
6 looking at the back. Why don't you tell me.
7 When approximately was this search warrant
8 affidavit prepared?

9 A. This was the end of August 2017.

10 Q. If you look at page 6 at the bottom,
11 under the section Criminal Activity Detailed,
12 beginning with paragraph 2 there appears to be a
13 listing of all of the contacts and complaints
14 from various sources.

15 Do you see that?

16 A. Yes.

17 Q. And would you look at the paragraph
18 2(a)? On September 29th, 2014 it references you
19 and Agent Bonish of the Board of Pharmacy
20 received information concerning the questionable
21 prescribing habits of Dr. James E.
22 Prommersberger from multiple registered
23 pharmacists practicing at Giant Eagle's number
24 4075 located just over 1,000 feet from the
25 office of Dr. James Prommersberger. Does this

1 refresh your recollection, sir, that this
2 investigation and prosecution of
3 Dr. Prommersberger began with Giant Eagle
4 pharmacists?

5 A. Yes.

6 Q. And from there your search warrant
7 continues to list multiple subsequent contacts
8 regarding his activities; am I right? You seem
9 to go in chronological order detailing each and
10 every activity and complaint that you received
11 about this doctor.

12 A. Yes.

13 Q. I'm going to refer you to paragraph
14 C. There's a reference to a Kroger Pharmacy
15 making a complaint.

16 Do you see that?

17 A. Yes.

18 Q. Paragraph D, a Walmart pharmacist
19 complaining -- I'm sorry, a pharmacy technician
20 employed at Walmart?

21 A. Yes.

22 Q. That was another source of
23 complaints. Paragraph F, an employee of Walmart
24 pharmacy 2211, do you see that?

25 A. Yes.

1 Q. And then paragraph G, Fred's Family
2 Pharmacy, yet another source of complaint for
3 this doctor.

4 Does that refresh your recollection
5 that you were getting multiple complaints from
6 multiple pharmacists and pharmacy employees,
7 including Giant Eagle, Kroger, Walmart,
8 complaining about this doctor?

9 A. Yes.

10 Q. Okay. And what was the nature of
11 these complaints? What was Dr. Prommersberger
12 doing according to these complaints?

13 A. Well, it seemed that these were
14 typically patients that did not live within the
15 geographical area and they were coming to Dr.
16 Prommersberger's office, they were being issued
17 prescriptions for opiates, and a lot of these
18 patients had several -- they were -- similar
19 prescriptions were being issued to all of them,
20 so a lot of their drug therapies were
21 identical, which typically is a red flag.

22 Q. Okay. And did your investigation
23 prove that to be true, that this doctor was
24 inappropriately prescribing opioids?

25 A. Yes.

1 Q. What is the status of the
2 prosecution of this doctor?

3 A. He's been indicted through Mahoning
4 County and we're currently awaiting a trial.

5 Q. And do you expect to use Giant Eagle
6 pharmacists or Walmart pharmacists in this
7 prosecution and trial in any way?

8 A. If the prosecutor deems it
9 necessary.

10 Q. Okay. Besides providing the initial
11 leads, did these pharmacies and pharmacists,
12 Giant Eagle and Walmart and these others listed,
13 did they cooperate with your investigation and
14 provide whatever records or assistance you
15 needed?

16 A. Yes.

17 Q. I understand that you have an open
18 investigation of another pharmacy, and because
19 it's open, I'm only going to refer to the name
20 once. Brown's Pharmacy?

21 A. Yes.

22 Q. And is that an independent pharmacy
23 in Trumbull County?

24 A. It's an independent pharmacy in
25 Mahoning County.

1 Q. That's a pending investigation, it's
2 open; is that right?

3 A. It's open and active.

4 Q. Okay. I'm going to not ask any
5 further questions because I've been advised that
6 it's open and active.

7 A. Thank you.

8 Q. Sure.

9 Have you received leads from
10 Rite-Aid from time to time concerning potential
11 diversion activities?

12 A. Yes.

13 Q. Have you worked with Rite-Aid's loss
14 prevention department to investigate and
15 prosecute diversion activities?

16 A. Yes.

17 Q. Would that include things like
18 deception and stealing of drugs?

19 A. Yes.

20 Q. Did Rite-Aid appear to have a
21 proactive and competent loss prevention
22 department that worked with you?

23 A. Yes.

24 - - - - -

25 (Thereupon, Deposition Exhibit 9,

1 One-Page Document Entitled
2 "Prescription Drug Investigations -
3 Techniques and Workflow," was
4 marked for purposes of
5 identification.)

6 - - - - -

7 Q. If you look at DiFrangia Exhibit 9,
8 this is a document captioned "Prescription Drug
9 Investigations - Techniques and Workflow."
10 Do you see that?

11 A. Yes.

12 Q. What is this exactly? I was trying
13 to -- and the only reason I put it in here is
14 because I couldn't get a full grasp on what
15 this -- what this is.

16 A. This looks like an internal
17 document. It's just giving some guidance on
18 how to approach determining whether you have a
19 prescribing issue with a prescriber.

20 Q. Is this kind of like a general
21 checklist of things to do for agents when they
22 receive a tip, how to go about it?

23 A. Yes.

24 Q. Does the Ohio Board of Pharmacy have
25 subpoena powers and the right to go into the

1 OARRS database as part of its investigations?

2 A. Yes. So we have administrative
3 subpoena powers through the Ohio Board of
4 Pharmacy and then we are able to access OARRS
5 data for investigations.

6 Q. And when you access OARRS data as
7 part of investigations, you're entitled to look
8 at all of the OARRS data, correct, not just
9 limited pieces of the data; is that right?

10 A. Correct.

11 Q. Indeed that's one of the reasons
12 OARRS was created was to assist law enforcement
13 to get all of the prescription data from all of
14 the pharmacies so that there would be a database
15 that law enforcement could look at to see
16 activity across pharmacies throughout the entire
17 state, right?

18 A. Yes. Part of it is assisting law
19 enforcement, but it's also assisting
20 prescribers and pharmacies and pharmacists.

21 Q. Right. So when a doctor writes a
22 prescription, part of his duties is to check
23 OARRS for certain types of prescriptions; is
24 that right?

25 A. Yes.

1 Q. So even before the prescription is
2 filled out, the doctor is supposed to check
3 OARRS for prescribing to the specific patient in
4 front of him; is that right?

5 A. Yes.

6 Q. So when the doctor checks OARRS
7 before writing the prescription, is he able to
8 see other prescriptions that this same patient
9 has obtained, for example, another doctor across
10 town or another doctor in the practice, things
11 of that nature?

12 A. Yes. They can see other
13 prescriptions for controlled substances only.

14 Q. Okay. No matter who issued them?
15 For example, it's not just me, the doctor, if I
16 check on this patient, I'm not just going in and
17 seeing what I prescribed to him, I'm seeing what
18 other doctors have prescribed to him in terms of
19 controlled substances?

20 A. Correct.

21 Q. But can the doctor look at other
22 doctors prescribing other than that patient?
23 For example, if a doctor saw that Dr. -- that
24 his patient in front of him was -- had seen
25 Dr. Smith a week earlier and got the same

1 prescription, am I right that the doctor would
2 only see that this patient got the same
3 prescription from some other doctor?

4 A. Yes, that's correct.

5 Q. But if he wanted to -- if that
6 doctor wanted to look at Dr. Smith's general
7 prescribing habits, he wouldn't be able to do
8 that, right?

9 A. Correct.

10 Q. But the board agents could do that?

11 A. Yes.

12 Q. That's the way that's set up?

13 A. Yes.

14 Q. So the doctor is limited to the
15 patient's controlled substance prescription
16 history only when he writes the prescription?

17 A. Yes. Now, a doctor can also review
18 their own prescribing through OARRS, but that's
19 it.

20 Q. Okay. So once the doctor reviews
21 OARRS and writes the prescription and the
22 patient goes to -- picks a pharmacy to get it
23 filled, what can the pharmacist see when he
24 accesses OARRS?

25 A. They can -- they can see the same

1 thing, just the patient's history of controlled
2 substances that have been dispensed to them.

3 Q. So the pharmacist doesn't have the
4 ability to say I want to see Dr. -- both
5 doctors' complete histories of what they're
6 doing?

7 A. Correct. Through OARRS they
8 cannot.

9 Q. Okay. And nor do the pharmacies
10 have subpoena powers, like the agents of the
11 board have; is that right?

12 A. As far as I know, they do not have
13 subpoena powers.

14 Q. Okay. And, in your experience, do
15 you understand that it's the board's
16 responsibility to investigate diversion using
17 the OARRS database, that that's their primary
18 responsibility?

19 A. Yes.

20 MR. BARNES: We've been at it an
21 hour and 45 minutes. Why don't we take a
22 ten-minute break.

23 THE VIDEOGRAPHER: Going off the
24 record at 10:43.

25 (Recess had.)

1 THE VIDEOGRAPHER: We are back on
2 the video record at 10:54.

3 BY MR. BARNES:

4 Q. Mr. or Agent DiFrangia, we're back
5 on the record after a short break. I want to
6 switch now to the licensing requirements set
7 forth in the Ohio regulations related to
8 pharmacies. Are you familiar with those
9 regulations?

10 A. Yes.

11 Q. Am I correct, sir, that Ohio
12 regulations call a pharmacy a terminal
13 distributor? Is that the regulatory language, a
14 TDDD?

15 A. Yes. Go ahead.

16 Q. It's a TDDD, terminal distributor of
17 dangerous drugs?

18 A. Yes.

19 Q. Known to laymen as a pharmacy?

20 A. Yes.

21 Q. Okay. Now, pharmacies have to be
22 licensed in Ohio; is that correct?

23 A. Correct.

24 Q. And in order to get that license,
25 they have to apply to and be approved by the

1 Ohio Board of Pharmacy?

2 A. Yes.

3 Q. And in order to go through that
4 process, they have to be inspected and reviewed
5 by board employees?

6 A. Yes.

7 Q. Can you describe for us what those
8 inspections and reviews entail? I guess what
9 I'm getting at is, how easy is it to get a board
10 license? Is it send in a \$25 check and give
11 them your name and you can open up shop or is it
12 more rigorous than that?

13 A. No. It's more rigorous. There's
14 an application process. There's a background
15 check that has to be conducted on ownership,
16 and then, you know, if the background check is
17 consistent, FBI BCI records check, and then
18 also internal background check. So if this is
19 a person that maybe we have dealt with in some
20 capacity, there's going to be a record of it,
21 and then the license -- the application is
22 processed by our licensing department. If
23 everything is okay, it's sent out to an agent
24 or an inspector, generally an inspector at this
25 point, and they will go conduct a -- you know,

1 an initial barricade inspection. If this is a
2 pharmacy that is just -- you know, just getting
3 up and going, maybe they occupied new space or
4 they built a new building, at that point we go
5 in and ensure that they have the bare bones
6 basic things to run a pharmacy, such as
7 adequate locks, you know, an alarm system of
8 some sort, access is limited to just
9 pharmacists, and, you know, they have some
10 systems in place to start obtaining drug orders
11 from different wholesalers. So it's -- it's a
12 rigorous process. And then, you know,
13 there's -- there's a fee that has to be paid.
14 And, you know, at that point, once you're up
15 and running, then you basically agree to future
16 inspections by us. You agree to, you know,
17 ensure that all the rules and regulations are
18 followed.

19 Q. Okay. And you have to maintain that
20 license, right? It's not once you're licensed,
21 you're forever licensed, you have to renew your
22 license from time to time; is that right?

23 A. Correct. It needs renewed -- I
24 think it's either every year or two years.

25 Q. And in connection with those

1 renewals, are you -- is the licensee subject to
2 further reviews and inspections by the board?

3 A. Yes. They -- each time they have
4 to answer an application, they have to attest
5 to the truthfulness of the application, and
6 it's resubmitted to the board. And then, you
7 know, inspections, they're not based on
8 whenever they reapply. The inspections can
9 come at various amounts of times. Sometimes
10 it's based on you haven't been inspected in a
11 while and a proactive inspection occurs, or
12 maybe there's an investigation, which could be
13 several different things, consumer complaints,
14 you know, maybe an error in dispensing or
15 something of that nature, but generally, at the
16 end of an investigation, we'll go in and
17 conduct an inspection at the pharmacy.

18 Q. I see. So the inspections aren't
19 triggered by renewal of licenses but inspections
20 are considered as part of the renewal process?

21 A. Yes.

22 Q. So can a bad inspection result in
23 loss of license?

24 A. It would have to be really
25 egregious.

1 Q. But that's a potential outcome,
2 correct?

3 A. Yes.

4 Q. I think in your Exhibit 5 we had
5 those four levels of potential results of
6 inspections, verbal warnings, written responses
7 required, citations or summaries, suspensions.
8 Do you remember that?

9 A. Yes.

10 Q. So if the inspection is bad, you
11 could get suspended, correct?

12 A. Yes.

13 Q. Okay. So there's a range of
14 outcomes. So the inspections themselves, would
15 you agree, are they an important part of the
16 licensing process and the renewal of the
17 licensing process?

18 A. I think it's an important part, but
19 again, it's -- it's just not solely based on
20 that renewal. You know, if there's an
21 ownership change in the renewal or they change
22 their name or they change their business
23 structure, that could prompt an inspection, but
24 it's just -- very rarely is it based on the
25 fact that they did their annual or biannual

1 renewal.

2 Q. Okay. All right. So the pharmacy
3 itself has to be licensed and go through that
4 rigorous process and then go through renewal
5 processes, but there's further licensing
6 involved at a pharmacy location, correct?

7 A. Yes.

8 Q. The pharmacist has to be licensed?

9 A. Yes.

10 Q. Is that right?

11 A. Yes.

12 Q. Who else has to be licensed in a
13 pharmacy according to the State of Ohio?

14 A. Pharmacy technicians also.

15 Q. Is that something you look for when
16 you go for your inspections, make sure that
17 those licenses are displayed and current?

18 A. I ensure that the -- all parties
19 are properly licensed. They actually don't
20 have to have their licenses displayed anymore,
21 but we do check to make sure that they are
22 properly licensed.

23 Q. And does the board license the
24 pharmacists themselves?

25 A. Yes.

1 Q. And in order to become a -- to get a
2 license as a pharmacist from the board, what are
3 the requirements to your understanding?

4 A. It requires -- it requires,
5 obviously, the education needed. There's --
6 there's different education requirements for
7 it, and then they have to apply, they have to
8 submit a records check, and they have to answer
9 honestly on their application. And our
10 licensing department does the same -- does the
11 same review of those applications, checks to
12 ensure that this is an individual that we have
13 somehow investigated in the past or something
14 of that nature, and then -- then their license
15 is issued, and it is renewed every two years,
16 and they, similarly, have to attest that, you
17 know, they haven't committed any crimes and
18 they're not -- you know, they're practicing in
19 the best methods and they've kept up on all
20 their required education items.

21 Q. Okay. So the renewal department --
22 I guess your licensing department takes care of
23 that, the original licensing of pharmacists and
24 the renewal of pharmacists' licenses?

25 A. Yes.

1 Q. And techs have to be -- pharmacy
2 techs have to be licensed. Is that a more
3 recent development? Is that like 2016 or '17?
4 Am I recalling correctly?

5 A. Yeah. I think it was -- I think it
6 was 2017 at some point.

7 Q. Why did the board decide to license
8 techs?

9 A. I think there are -- there are
10 several different reasons. One that I can
11 imagine is that, you know, if you have someone
12 that potentially diverts medication, there's --
13 there's an extra oversight over them. This way
14 they just can't go to another pharmacy and
15 start working as a technician. We control
16 that. We dictate their license status, and,
17 again, it's just really an extra -- extra --
18 extra arm that's ensuring that someone, you
19 know, is practicing in their best faith. And I
20 think it brings a little bit more
21 professionalism to the career of a pharmacy
22 technician.

23 Q. Since that licensing for techs
24 requirement went into effect, have you seen it
25 have any beneficial effect on diversion?

1 A. Yes.

2 Q. How so?

3 A. Well, as I mentioned, what it does
4 is if we -- if we determine that there's a
5 pharmacy technician that's diverting drugs or
6 if they have an addiction or for whatever
7 reason that they're a threat to public safety,
8 we're able to revoke or suspend their pharmacy
9 technician license. This way if -- let's say
10 they're working at Giant Eagle, they get
11 terminated. They can't go to an independent
12 pharmacy that's maybe in another county and
13 then work as a pharmacy technician there
14 because their license is suspended.

15 Q. I see. Okay. So it has had a good
16 effect on decreasing diversion by requiring
17 techs to be licensed?

18 A. Yes.

19 Q. Okay. Have I covered everybody or
20 anybody and everybody that needs to be licensed
21 at these retail pharmacy locations? We have the
22 pharmacy itself and we have the pharmacists and
23 we have the pharmacy technicians. Is there
24 anybody else that needs to be licensed?

25 A. If there's a pharmacy intern,

1 they're also licensed.

2 Q. When did they have to become
3 licensed? When did that start?

4 A. As far as -- as long as I've been
5 here.

6 Q. Okay. And do they go through the
7 same application and review process and renewal
8 process similar to techs?

9 A. Yes.

10 Q. And when you do your inspections, do
11 you check on the current status of the pharmacy
12 interns and pharmacy techs and pharmacist
13 licenses?

14 A. Yes.

15 Q. And is it important to the board,
16 when you do your inspections, to make sure that
17 everybody and anybody is properly licensed?

18 A. Yes, that's very important.

19 Q. Are you familiar with the Ohio
20 regulations concerning the so-called manner of
21 processing prescriptions regulations?

22 A. Yes.

23 Q. And do those regulations set forth
24 the steps that the board wanted the pharmacists
25 to follow when filling prescriptions?

1 A. Yeah. I think it's -- I mean, I
2 don't know exactly, you know, why it was
3 implemented, but to me, my interpretation is
4 that it's for pharmacists and prescribers.

5 Q. I see. Okay. And are you familiar
6 with the term "patient profiles," pharmacies
7 having patient profile systems under the
8 regulations, that was a requirement?

9 A. Yes.

10 Q. And is that something you look for
11 in your inspections, to make sure that the
12 pharmacy had an ability -- had a patient profile
13 system so that when a prescription was being
14 filled, the pharmacist could access that patient
15 profile and take a look at the prescribing
16 history for that patient at that store?

17 A. Yes.

18 Q. Was that an important part of the
19 regulations in your mind?

20 A. Very important.

21 Q. Why was it so important?

22 A. For various different reasons.
23 It's going to ensure that there aren't any type
24 of medical interactions or drug interactions,
25 not just controlled substances but all

1 medication that's being dispensed to a patient.
2 A pharmacist uses their clinical knowledge and
3 all their additional resources to ensure that
4 the patient is not getting anything that is
5 unsafe for them or is going to have any other
6 interactions with any of the other medications
7 that they are taking. And it also is used to
8 review any potential early -- early fills of
9 controlled substance medication. It could be
10 indicative of any potential addiction issues or
11 suspicious issues that could come up from
12 reviewing that patient profile.

13 Q. Okay. But that patient profile
14 system was not an OARRS system, it was a -- it's
15 a store system; is that right?

16 A. Yes.

17 Q. And did the Board of Pharmacy ever
18 require a pharmacy location to have any
19 different type of system other than the patient
20 profile system which showed that patient's
21 prescribing history for that store?

22 MR. WEINBERGER: Objection.

23 A. No. As far as I -- as far as I'm
24 aware, they have to have a patient profile
25 system that could speak to any other pharmacies

1 that are in there. If it's a chain, they have
2 to be able to review all those prescriptions.
3 If it's just an independent pharmacy, then, you
4 know, it's strictly -- strictly limited to just
5 those prescriptions.

6 Q. If you would look at Exhibit 10 in
7 the first binder.

8 A. Are we talking the volume 1 binder?

9 Q. Yes. Are you with me?

10 A. I'm still searching for it. Okay.

11 Q. You see that's Ohio Regulation
12 4729-5-18. It's called "Patient Profiles."

13 A. Nope. I'm sorry. I'm at Manner of
14 Processing a Prescription.

15 Q. Go to the third page of that
16 exhibit.

17 A. Okay.

18 Q. Are you with me now? It's at 5-18,
19 "Patient profiles."

20 A. Yes.

21 Q. And do you recognize this as the
22 patient profile regulation for pharmacies?

23 A. Yes.

24 Q. And does that list the requirements
25 under the Ohio regulations for what a pharmacy's

1 patient profile system must contain?

2 A. Yes.

3 Q. And you see under A there's a
4 listing from A-1 through 1 and 2. The number 1
5 is the patient's data record containing the full
6 name of the patient, address, telephone number,
7 date of birth, gender, patient specific data
8 consisting of drug-related allergies, previous
9 drug reactions, history of or chronic conditions
10 or disease states, other drugs and nutritional
11 supplements. So is that your understanding that
12 that's what the regulations require to be in the
13 patient's data record?

14 A. Yes.

15 Q. All right. And part (f) of A(1)(f),
16 "Pharmacist's comments relevant to the
17 individual patient's drug therapy, including any
18 other necessary information unique to the
19 specific patient or drug," that was also a
20 requirement for the patient profile system?

21 A. Yes.

22 Q. Part 2 of this regulation says, "The
23 patient's drug therapy record, which shall
24 contain at least the following information for
25 all of the prescriptions that were filled at the

1 pharmacy within the last 12 months, showing name
2 and strength of the drug or device, prescription
3 number, quantity dispensed, date dispensed, name
4 of the prescriber," and there's directions for
5 use. Does that indicate to you that that's --
6 that that was the regulatory requirement for the
7 patient profile system?

8 A. Yes.

9 Q. And then, just to complete this
10 regulation, under part B, "Any information that
11 is given to the pharmacist by the patient or
12 caregiver to complete the patient data record
13 shall be presumed to be accurate unless there is
14 reasonable cause to believe the information is
15 inaccurate," that was also part of the patient
16 profile system, correct?

17 A. Yes.

18 Q. And then finally, part C, "The
19 patient profile shall be maintained for a period
20 of not less than one year from the date of the
21 last entry in the profile record. This record
22 may be a hard copy or a computerized form." So
23 is it your understanding that the patient
24 profile had to go back for one year from the
25 date of the last entry?

1 MR. WEINBERGER: Objection.

2 Q. Go ahead.

3 A. That's my understanding.

4 Q. And is that the regulation you were
5 enforcing when you went in and did your
6 investigations?

7 MR. WEINBERGER: Objection.

8 A. Generally they have much longer.
9 The patient profiles are -- they go well beyond
10 one year.

11 Q. Okay. Going back to Subsection
12 A(2) --

13 MR. WEINBERGER: I withdraw the
14 objection to the last question.

15 Q. -- "for all of the prescriptions
16 that were filled at the pharmacy," is that a
17 reference to the pharmacy that filled the
18 prescription, the specific store?

19 MR. WEINBERGER: Objection.

20 A. Yes, I believe that's for the
21 specific store; however, like I had indicated
22 earlier, if you have a chain, they can
23 generally see medications that were dispensed
24 from other pharmacies within the chain.

25 Q. Okay. But what I'm getting at is to

1 try to understand the regulation. The actual
2 regulation requires a patient profile for the
3 specific store that fills the prescription?

4 MR. WEINBERGER: Objection.

5 A. Yes.

6 Q. Okay. Are you familiar with the
7 term "drug utilization review"?

8 A. Yes.

9 Q. What is that in your mind?

10 A. In my mind, it's a pharmacist
11 using -- using multiple items to make a
12 determination prior to dispensing the
13 medication, make sure that it's safe and, you
14 know, they're going to use things like review
15 the patient profile, review OARRS, review some
16 of their clinical knowledge and even some of
17 their clinical resources to really ensure that
18 the medication is issued for a legitimate
19 manner and that it's safe for the patient to
20 consume.

21 Q. When you did your inspections, were
22 you -- were part of your inspections to ensure
23 compliance by the pharmacy with the drug
24 utilization review regulation?

25 A. Yes.

1 Q. Okay. If you go back to Exhibit 10,
2 this Edwards Exhibit 10, right after the page we
3 just went over for patient profiles, there's
4 Prospective Drug Utilization Review Regulation
5 4975-5-20.

6 A. Yes.

7 Q. Do you recognize this regulation as
8 the regulation that you were ensuring compliance
9 with when you went into your inspections?

10 A. Yes.

11 MR. WEINBERGER: Objection.

12 A. Yes, I do.

13 Q. Now, this drug utilization review
14 regulation requires -- at the very beginning
15 requires, prior to dispensing any prescription,
16 a pharmacist shall review the patient profile,
17 which is what we just went over. Was that your
18 understanding?

19 A. Yes.

20 Q. And there's a list here of things
21 that -- it's for the purposes of identifying
22 things like over-utilization or
23 under-utilization, therapeutic duplication, drug
24 disease state contraindications, drug-drug
25 interactions, incorrect drug dosage, drug

1 allergy interactions, abuse, misuse,
2 inappropriate duration of drug treatment, and
3 food-nutritional supplement drug interactions.
4 Is that your understanding of the regulatory
5 requirement for drug utilization reviews?

6 A. Yes, to my understanding.

7 Q. Okay. Now, part B of this
8 regulation states that upon identifying any
9 issue listed in that list we just went over, a
10 pharmacist, using professional judgment, shall
11 take appropriate steps to avoid or resolve the
12 potential problems. These steps may include
13 requesting and reviewing an OARRS report or
14 another state's report pursuant to paragraph D
15 of this rule and/or consulting with the
16 prescriber and/or counseling the patient.

17 Did you -- were you aware of this
18 regulation as part of the drug utilization
19 review process?

20 A. Yes.

21 Q. And what did you understand the
22 reference to a pharmacist using professional
23 judgment to mean?

24 A. And this is my interpretation of
25 it, but they -- they rely on all their

1 resources, all their clinical knowledge, all
2 their education, and, you know, using their
3 professional judgment to potentially not fill
4 the prescription, if that's need be, or contact
5 the physician, maybe, you know, have some sort
6 of different strength or something of that
7 nature, but that's kind of -- to me that's how
8 I interpret a pharmacist using their
9 professional judgment.

10 MR. WEINBERGER: Objection. Move
11 to strike.

12 Q. Now, did the board ever require
13 pharmacists to do anything specific in terms of
14 exercising their professional judgment in that
15 regard? In other words, to your knowledge, is
16 there any regulation or requirement by the board
17 that a pharmacist follow specific steps in every
18 instance in filling a prescription?

19 MR. WEINBERGER: Objection.

20 A. Could you -- could you ask that
21 question again? I'm sorry.

22 Q. Sure.

23 We just read this Subsection B of
24 the drug utilization review regulation and it
25 references professional judgment, and it says,

1 "These steps may include requesting and
2 reviewing an OARRS report or another state's
3 report and/or consulting with the prescriber
4 and/or counseling the patient." My question
5 is, do you review these -- or do you view these
6 regulatory requirements as a mandatory
7 requirement that in every instance a pharmacist
8 is required to request an OARRS report or
9 consult with the prescriber or counsel the
10 patient or, instead, is that a matter of
11 professional judgment?

12 MR. WEINBERGER: Objection.

13 A. My interpretation is it's a matter
14 of professional judgment.

15 Q. Okay. Now, Subsection D of this
16 regulation references the OARRS -- the
17 conditions under which OARRS has to be
18 consulted. Are you familiar with this section
19 of the regulation?

20 A. Yes.

21 Q. And when you did your inspections,
22 did you take a look at, from time to time,
23 compliance with this regulation, making sure
24 that pharmacists were consulting OARRS when
25 required to from time to time?

1 MR. WEINBERGER: Objection.

2 A. Yes.

3 Q. And what is your understanding of
4 when a pharmacist, under this regulation, was
5 required to consult OARRS as opposed to do it
6 discretionary under the professional judgment
7 standard?

8 A. Well, at the very bare minimum, as
9 long as nothing has changed with the patient's
10 prescriptions, OARRS should be reviewed every
11 12 months. Anytime a new controlled substance
12 is introduced into their drug therapy, a new
13 physician prescribes a controlled substances --
14 a controlled substance, then they should review
15 OARRS. If there's any red flags, such as the
16 patient comes in with a prescription from a
17 prescriber outside of the geographical area or
18 the patient is outside of the geographical
19 area, they should be reviewing OARRS. And, in
20 general, if they have any type of suspicion of
21 addiction or impairment or overusage of their
22 medication, then the pharmacist should be
23 accessing OARRS.

24 Q. All right. Well, let's look at the
25 regulation, part D(1), and the precursor of part

1 D says in any of the following circumstances,
2 review the OARRS report. The first one says, "A
3 patient adds a different or new reported drug to
4 their therapy that was not previously included."
5 So you mentioned that a second ago, but if it's
6 a new drug, check OARRS?

7 A. Yes.

8 Q. Number 2 says, "An OARRS report has
9 not been reviewed for that patient during the
10 preceding 12 months, as indicated in the patient
11 profile," so, in that instance, which you also
12 mentioned, check OARRS?

13 A. Yes.

14 Q. Number 3 says, "A prescriber is
15 located outside the usual pharmacy geographic
16 area," and, in that instance, check OARRS,
17 right?

18 A. Yes.

19 Q. What do you understand the term to
20 be "outside the usual pharmacy geographic area"?
21 Is that a specific mileage requirement or does
22 it depend on the facts and circumstances of the
23 pharmacy?

24 A. It depends on the specific facts
25 and circumstances of the pharmacy.

1 Q. To your knowledge, did the board at
2 any time ever tell the pharmacies that you
3 better check OARRS if it's X number of miles, if
4 the prescriber is X number of miles away from
5 the pharmacy?

6 A. No. That's never been
7 communicated.

8 Q. So who makes this determination of
9 whether they need to check OARRS because of
10 being outside the usual pharmacy geographic
11 area?

12 A. The pharmacist does.

13 Q. It's up to the pharmacist?

14 A. Yes.

15 Q. What about number 4, "A patient is
16 from outside the pharmacy geographic area"? Is
17 that, similarly, a matter of the pharmacist's
18 professional judgment?

19 A. Yes.

20 Q. And, similarly, did the board ever
21 advise the pharmacies that if a patient is X
22 number of miles away from the pharmacy, you have
23 to check OARRS?

24 A. No. That's -- as far as I'm aware,
25 that's never been communicated.

1 Q. Okay. Number 5 says, "A pharmacist
2 has reason to believe the patient has received
3 prescriptions for reported drugs from more than
4 one prescriber in the preceding three months
5 unless the prescriptions are from prescribers
6 who practice at the same physical location."

7 So how would a pharmacist have
8 reason to believe this, that a prescription has
9 been received from more than one prescriber in
10 the preceding 3 months?

11 A. Probably from reviewing the patient
12 profile, and then also they would confirm it or
13 deny it through OARRS.

14 Q. Well, this is a checklist of when to
15 check OARRS, so this would be the trigger for
16 checking OARRS, and so what I'm getting at is,
17 before they check OARRS, this is saying check
18 OARRS if the pharmacist has reason to believe
19 the patient has received prescriptions for
20 reported drugs from more than one prescriber in
21 the preceding 3 months. So when, in your
22 experience, would that trigger the need to go
23 check OARRS? I'm not talking about what he
24 would see when he got into OARRS. I'm saying
25 how does that work, how does that trigger?

1 A. So my -- my guess would be that's
2 coming from reviewing the patient profile.

3 Q. Okay. And then, finally, the
4 regulation has a section 6 under this list of
5 when to check OARRS, "Patient is exhibiting
6 signs of potential abuse or diversion." What
7 does that mean?

8 A. That could be a multiple --
9 multitude of things. It could be a patient
10 that comes into the pharmacy impaired. It
11 could be a patient that, you know, repeatedly
12 asks for early refills of their medication.
13 They may -- a pharmacy may have been notified
14 by someone that this person is abusing their
15 medication or selling their medication or
16 something of that nature.

17 Q. Is this a subjective thing that the
18 pharmacy looks for in its professional judgment?

19 A. Yes.

20 Q. And it says, "This includes, but is
21 not limited to, overutilization, early refills,"
22 which you just mentioned, "appears overly
23 sedated or intoxicated upon presenting a
24 prescription for a reported drug, or an
25 unfamiliar patient requesting reported drug by

1 specific names, street name, color or
2 identifying marks."

3 Again, this is something that would
4 come up in the patient profile or on this
5 objective observation of the pharmacist?

6 A. This would be a -- I think some of
7 it could come up in a patient profile, such as
8 those early refills. I think generally
9 pharmacists -- if this is a once in a --
10 something that's never been requested and
11 there's a legitimate explanation, they may
12 dispense an early refill a few days; however,
13 some of these other things, such as exhibiting
14 signs, those are purely -- those are purely
15 observations that would be made by the
16 pharmacist.

17 Q. Okay. Now, Agent DiFrangia, you
18 mentioned a couple minutes ago a concept of red
19 flags. By that term did you mean these items we
20 just went over in the drug utilization review,
21 Subsection D?

22 A. Yes.

23 MR. APPEL: Bob, this is Henry
24 Appel. I'm just letting you know that it's
25 approaching 11:30.

1 MR. BARNES: Okay. What time do we
2 have, 11:28? Let me see if we can finish this
3 regulation.

4 Q. The last portion of this regulation,
5 Subsection G, do you see that?

6 A. Yes.

7 Q. "A prescription, to be valid, must
8 be issued for a legitimate medical purpose by an
9 individual prescriber acting in the usual course
10 of his or her professional judgment." Did you
11 look to see compliance with this portion of the
12 regulation when you did your inspections?

13 A. I mean, we would generally ask
14 pharmacists, but, you know, this is something
15 that you can't -- you can't visually see as an
16 inspector.

17 Q. But you did look at dispensing
18 records from time to time to ensure compliance
19 with the regulations?

20 A. Yeah. We would look at dispensing
21 records, we would ensure that they're running
22 OAARS, we would ensure that they're conducting
23 a drug utilization review and that they're not
24 relying solely on the dispensing software. So,
25 yeah, I mean, I guess -- I guess if you take

1 all those things combined, then we are checking
2 to ensure, you know, that prescriptions are
3 being issued for a legitimate medical purpose
4 based on those things; however, you know, are
5 there specific things that we just don't
6 know -- I mean, we ask the pharmacists
7 sometimes about prescribers, if there's any
8 suspicion of questionable prescribing with
9 anyone. You know, unless they tell us, we
10 generally don't know that sometimes.

11 Q. All right. One last question before
12 we break.

13 Going back to Subsection D of the
14 regulations and this concept of the red flags,
15 other than these red flags in subsection D of
16 this regulation, are you familiar -- are you
17 aware of the Board of Pharmacy ever advising
18 pharmacies or pharmacists that there were any
19 other red flags that they needed to look out
20 for in terms of regulations?

21 MR. WEINBERGER: Objection.

22 A. I'm sure there's other red flags
23 that we have, you know, advised them of through
24 guidance documents, but, you know, nothing --
25 nothing exactly comes to mind, but it's not

1 limited just to these items in here.

2 Q. Okay. What other red flags are you
3 aware of besides what's listed here?

4 A. Well, like I said, you know, if
5 they get any information of someone that is,
6 you know, potentially abusing their medication
7 or diverting it or selling it, you know --

8 Q. Okay. So if they have specific
9 information that somebody may be a bad actor,
10 they should consider that?

11 A. Yeah, or, you know, sometimes
12 you'll get a carload of individuals where four
13 of them are presenting similar prescriptions
14 from a prescriber. You know, again, that's --
15 that's a pretty suspicious scenario that I
16 think most reasonable pharmacists would
17 exercise their professional judgment and not
18 dispense that medication.

19 MR. BARNES: Okay. We agreed to
20 break at 11:30 so Henry could take care of some
21 matters. We'll take a lunch break and be back
22 at 12:30.

23 THE VIDEOGRAPHER: We are going off
24 at 11:32.

25 (Luncheon recess had.)

1 THE VIDEOGRAPHER: We are back on
2 the video record at 12:33.

3 - - - - -

4 AFTERNOON SESSION

5 CONTINUED EXAMINATION OF WILLIAM DiFRANGIA
6 BY MR. BARNES:

7 Q. Good afternoon, Agent DiFrangia.
8 We're back on the record after a lunch break.

9 We were looking at Edwards Exhibit
10 10 and I want to pick up there, just a few
11 questions. These are the regulations related
12 to how prescriptions are to be filled,
13 including 4729-5-20, 21, 18, 16, 22 and 09. We
14 were talking about the drug utilization review
15 regulation, 5-20.

16 A. Okay.

17 Q. Do you remember that? We walked
18 through that.

19 A. Yes.

20 Q. And we were talking about Subsection
21 G, which begins, "A prescription, to be valid,
22 must be issued for a legitimate medical purpose
23 by an individual prescriber acting in the usual
24 course of his or her professional practice."

25 Do you see that?

1 A. Yes.

2 Q. Now, the reference to "a legitimate
3 medical purpose," in your experience, can you
4 determine if a prescription is valid without
5 talking to or looking at the records of the
6 doctors?

7 A. You know, I don't -- I don't know
8 that I can answer that because I don't -- I'm
9 not a pharmacist and I don't have the -- you
10 know, I don't have the background or education
11 or practice of a pharmacist.

12 Q. But when you were doing your
13 investigations of doctors -- and we've covered a
14 few of those -- would you look at the doctor's
15 records if you were -- if you suspected bad
16 prescriptions?

17 A. Yes. Ultimately we would generally
18 get patient records and review them or we would
19 have an expert physician review them.

20 Q. Okay. Because you weren't medically
21 trained but you needed the input of a medical --
22 medically trained professional?

23 A. Correct.

24 Q. Now, the second sentence of this
25 regulation says -- begins, "The responsibility

1 for the proper prescribing is upon the
2 prescriber." How did you understand that
3 portion of the regulation?

4 A. Well, my interpretation -- and I'm
5 not a lawyer or an attorney. My interpretation
6 is just that, you know, it rests -- it's
7 upon -- the responsibility is upon the
8 prescriber that's issuing the prescription, but
9 that's just my interpretation of it.

10 Q. Okay. Does -- was that the
11 understanding you had and have had while you
12 have been functioning as an agent for the board?

13 A. Yes.

14 MR. WEINBERGER: Excuse me for just
15 a second. I was on mute. With respect to the
16 prior answer, would you please note an
17 objection and motion to strike? Thank you.

18 MR. BARNES: Pete, are you asking
19 her to read something back?

20 MR. WEINBERGER: No. No. I just
21 wanted her to note on the record an objection
22 and that I was moving to strike the answer to
23 the question prior to that question and answer
24 because I was on mute.

25 THE COURT REPORTER: Yes, I will

1 note that.

2 MR. WEINBERGER: Thank you.

3 Q. Continuing in that regulation, Agent
4 DiFrangia, it says -- after the responsibility
5 for proper prescribing being on the prescriber,
6 it continues that a corresponding responsibility
7 rests with the pharmacist who dispenses the
8 prescription.

9 Do you see that?

10 A. Yes.

11 Q. And you've referenced this
12 corresponding responsibility in the past, in
13 your past testimony, but continuing with this
14 regulation, it says, "Based upon information
15 obtained during a prospective drug utilization
16 review, a pharmacist shall use professional
17 judgment when making a determination about the
18 legitimacy of a prescription."

19 Is that how you understood it, that
20 the corresponding responsibility after the
21 prescriber's responsibility for the
22 prescription at the beginning, the
23 corresponding responsibility is based upon the
24 drug utilization review?

25 A. Yes, that's my understanding.

1 Q. And the professional judgment
2 aspect, how did you understand that to operate?

3 A. Well, it would be within a
4 pharmacist's professional judgment to dispense
5 medication or not or potentially adjust the
6 medication through contacting the physician.
7 That's the way I would interpret that.

8 Q. Okay. And this regulation finishes
9 by saying, "A pharmacist is not required to
10 dispense a prescription of doubtful,
11 questionable or suspicious origin."

12 How did you understand that portion
13 of the regulation?

14 A. Just frankly pretty much as it
15 says, that they don't have to dispense
16 medications if they feel, you know, for any
17 different reason that it's not warranted.

18 Q. All right. Did you understand that
19 the professional judgment of a pharmacist, when
20 dispensing, could include things like prior
21 relationships with the patients, knowledge of
22 the doctors, things of that nature?

23 A. I'm sure that can all come into
24 their decision-making.

25 Q. Okay. Now, when we get back to this

1 5-21, Manner of Processing a Prescription
2 Regulation, which is in Edwards Exhibit 10,
3 you'll see in part B -- it's the first page of
4 Exhibit 10 -- part B says, "A pharmacist when
5 dispensing a prescription must," and then it
6 lists five steps, ensure that patient
7 information is profiled pursuant to 5-18 of the
8 code. We went over that, right?

9 A. Right.

10 Q. Step 2 is perform prospective drug
11 utilization review pursuant to 4729-5-20, and we
12 went over that; is that right?

13 A. Yes.

14 Q. And then the third step is ensure
15 that the drug is labeled pursuant to 4729-5-16.
16 Are you familiar with that labeling requirement,
17 and if so, what was your understanding of it?

18 A. Yes, I am familiar with it. My
19 understanding is that it -- there's specific
20 items that are required to be on a prescription
21 label, such as the patient's name, address,
22 medication, strength, quantity of the
23 medication, direction for use, the prescriber
24 of the medication, and instructions for when to
25 take that medication.

1 Q. That regulation, 5-16, is several
2 pages into Edwards Exhibit 10. Does that help
3 you refresh your recollection as to what the
4 labeling requirement was? Do you see that,
5 4729-5-16?

6 A. Yes.

7 Q. Are those listed there under A(1)
8 through (10)?

9 A. Yes.

10 Q. And when you did your inspections,
11 were you in part making sure that the pharmacies
12 complied with this regulation?

13 A. Yes.

14 Q. So going back to the 5-21, Manner of
15 Processing regulation, the fourth step is
16 "Ensure that the patient is given an offer to
17 consult pursuant to Rule 4729-5-22." Were you
18 familiar with that regulation, and if so, what
19 was your understanding?

20 A. Yes, I am familiar with it, and
21 again, my interpretation just coming from me --
22 I'm not a lawyer -- the interpretation is that
23 each prescription that is dispensed and offered
24 to provide consultation is required by the
25 pharmacist to the patient.

1 Q. And is that something that you've
2 checked on when doing your inspections,
3 compliance with this patient counseling
4 regulation?

5 A. Yes.

6 Q. And would that include looking for
7 things like counseling logbooks, where patients
8 would sign off that they did or didn't want
9 counseling?

10 A. Yes. There would be a counseling
11 log where the pharmacist would document who --
12 which pharmacist provided the counseling, and
13 then there's also usually documentation where
14 the patient declines it if they do not want any
15 counseling.

16 Q. Okay. And do you recognize this
17 regulation in Edwards Exhibit 10, 4729-5-22?

18 A. Yes.

19 Q. And then going back to the 5-21,
20 Manner of Processing, after the labeling and
21 counseling, the last step, number 5, is "Ensure
22 that a prescription is filed pursuant to
23 4729-5-09." And that's also in Exhibit 10.
24 It's the last page. But how did you understand
25 that regulation and were you aware of it?

1 A. Yes, I was aware of it. My
2 understanding of it, just my interpretation --
3 this is not -- again, I'm not a lawyer -- my
4 interpretation is that hard copy prescriptions
5 have to be maintained in a prescription file
6 and they have to be separated by way of
7 schedule, Schedule II and then III through V,
8 and then all non-controlled prescriptions.

9 Q. Okay. Again, when you did your
10 inspections, were you looking for compliance
11 with that regulation?

12 A. Yes.

13 Q. So going back to the 5-21, Manner of
14 Processing a Prescription, under B(1) through
15 (5), are those the five steps that Ohio law
16 required pharmacists to follow when filling a
17 prescription?

18 A. Yes, that's the way I interpret
19 that.

20 MR. WEINBERGER: Objection. Move
21 to strike.

22 Q. I want to focus your attention,
23 Agent DiFrangia, on inspections. We talked at
24 length already about inspections, but there are
25 regulations, Ohio regulations, governing

1 inspections, correct?

2 A. Yes.

3 Q. And if you look at Edwards Exhibit
4 11 --

5 A. I have it.

6 Q. -- do you recognize these as the
7 Ohio regulations governing inspections of
8 pharmacies?

9 A. Yes.

10 Q. And do these regulations provide the
11 Board of Pharmacy and its agents and inspectors
12 the right to inspect a pharmacy upon application
13 for a license and at any time thereafter?

14 A. Yes.

15 Q. Do you recognize Edwards Exhibit 12?

16 A. Yes, I do.

17 Q. What is it?

18 A. So this is an inspection guide that
19 this -- this is put on our website and it's
20 available for -- for review. Pharmacists,
21 pharmacies, they can review it and kind of get
22 an idea of what our expectations are during
23 inspections.

24 Q. And it's relatively new. It looks
25 like it was dated December 1 of 2020. Is that

1 right, it just came out very recently?

2 A. Yes.

3 Q. Is this the first inspection guide
4 that you're aware of that's been used by agents
5 or inspectors of the board?

6 A. No. We've had some informal things
7 that we would use as guidance while conducting
8 inspections, but this is the first to be put on
9 our website.

10 Q. I see. And so is it -- my
11 understanding correct that this isn't
12 necessarily new things that are new standards
13 for inspections, but instead, this is the first
14 time they've been compiled and put on the
15 website?

16 A. Well, these -- a lot of these are
17 new rules, and I think because of so many
18 changes, my guess is that maybe that's why it
19 was put on the website.

20 Q. And have you used this guide in your
21 inspections?

22 A. You know, I -- I don't think I
23 have, primarily because since the pandemic has
24 taken place, we really have been limited to our
25 exposure in pharmacies.

1 Q. There are sections of this
2 inspection manual -- for example, on page 33
3 there's a reference to dispensing records and
4 patient profiles.

5 Do you see that?

6 A. Yes.

7 Q. And the question appears to be,
8 "Does the pharmacy maintain dispensing records
9 containing the required information?" And it
10 lists a lot of -- a lot of requirements. My
11 question to you is, regardless of whether or not
12 this manual came out recently, but are these the
13 types of things that you covered in your
14 inspections before this manual came out to make
15 sure that pharmacies that you inspected were
16 maintaining adequate dispensing records?

17 MR. WEINBERGER: Objection.

18 A. Yeah, for the most part. These --
19 these are pretty much the items that we have
20 reviewed even prior to the issuance of this
21 during inspections.

22 Q. All right. So part of your
23 inspections included review of the pharmacy's
24 dispensing records?

25 A. Yes.

1 Q. Okay. And then part of your
2 inspection, did it also include making sure that
3 the pharmacies were keeping the records for the
4 required regulatory time frame?

5 A. Yes.

6 Q. And in that regard, if you look at
7 page 39 of this inspection manual, this is
8 geared towards general recordkeeping
9 requirements. What did you understand to be
10 pharmacies' recordkeeping requirements in terms
11 of time frame? How long did they have to have
12 records; one year, two year, three years?
13 That's what I'm getting at.

14 A. They're required to keep three
15 years' worth of records.

16 Q. Okay. And is that something you
17 looked for in your inspections, to make sure
18 they were complying with that three-year
19 recordkeeping requirement?

20 A. Yes.

21 Q. Page 43 of this inspection manual
22 governs security, control and storage of
23 dangerous drugs. Was that part of your
24 inspections before this manual came out, to
25 review security controls and storage of

1 dangerous drugs?

2 A. Yes.

3 Q. Page 56 of this manual deals with
4 prescription formatting and manner of issuance.
5 We just went over the manner of issuance
6 requirements, but before this manual came out,
7 did you, in your inspections, follow
8 substantially the same or similar procedures as
9 indicated under this section, and that begins
10 with do outpatient prescriptions comply with the
11 manner of issuance rule that we just went over,
12 4729-5-15?

13 A. Yes.

14 Q. Do you see that?

15 A. Yes.

16 Q. Now, you are familiar with the
17 inventory requirements for pharmacies, correct?

18 A. Yes.

19 Q. And is that something that you
20 looked for compliance with in your inspections,
21 to make sure that they were taking an adequate
22 number of controlled substance inventories?

23 A. Yes.

24 Q. And is Edwards Exhibit 13 the
25 regulation that you were enforcing during those

1 inspections?

2 A. Okay.

3 Q. Are you familiar with this
4 regulation, 4729:5-3-07?

5 A. Yes.

6 Q. All right. And what did this
7 regulation require for pharmacies in terms of
8 conducting inventories of their controlled
9 substances?

10 A. Well, again, my interpretation only
11 is that, you know, they were required annually
12 to take an inventory of all their controlled
13 substances, and they also had to do so when
14 they change responsible persons within the
15 pharmacy.

16 MR. WEINBERGER: Move to strike.

17 Q. So that was an annual inventory
18 requirement. In your inspections did you see
19 from time to time pharmacies doing those
20 inventories more frequently than the regulatory
21 once-a-year requirement?

22 A. Yeah, from time to time.

23 Q. Okay. Do you recall specifically,
24 for example, Giant Eagle conducting these
25 inventories more frequently than annually?

1 A. No, I don't, not for the controlled
2 substance inventory.

3 Q. You don't recall that?

4 A. Not off -- no, not off the top of
5 my head.

6 Q. Okay. Fair enough. I probably
7 wouldn't remember either. But if they did --

8 MR. WEINBERGER: Objection. Move
9 to strike the comment.

10 Q. Do you view having more frequent
11 controlled substance inventory as a good
12 internal control?

13 A. Yes.

14 Q. Now, Agent DiFrangia, we've
15 compiled -- the board was kind enough to produce
16 inspection reports for the pharmacy Defendants,
17 and Exhibit -- Edwards Exhibit 16 were the ones
18 conducted by Trey Edwards -- I'm sorry, Exhibit
19 15 for Trey Edwards, Exhibit 16 were those
20 conducted by George Pavlich, and Exhibit 17 were
21 all other inspections in these two counties,
22 Lake and Trumbull, conducted by other
23 inspectors, including yourself. So if you can
24 look at Edwards Exhibit 17.

25 A. Okay.

1 Q. Do you recognize these documents as
2 inspection reports prepared by Board of Pharmacy
3 agents?

4 A. Yes.

5 Q. Do you recognize any of the names,
6 Mr. Bodi, for example, on the first page?

7 A. Yes.

8 Q. Did the agents at the board,
9 including yourself, work together with respect
10 to the inspections that they were doing? In
11 other words, would you cross-check against the
12 other agents to see -- you know, if you were
13 going out to inspect, for example, a Giant Eagle
14 pharmacy, you told me earlier you would check
15 prior inspection reports. Would you also talk
16 with agents who had done those inspections to
17 see if there was anything notable about their
18 inspections?

19 A. Yes.

20 Q. Okay. Do you recall talking with
21 any of your fellow agents about Giant Eagle
22 pharmacies?

23 A. I mean, I'm sure I've had
24 conversations with fellow agents about Giant
25 Eagle pharmacies, but nothing, you know,

1 specific that I can really think of.

2 Q. Okay. In this Exhibit 17 I was able
3 to locate approximately four or five inspection
4 reports, and if you look at -- I don't know how
5 many pages it is, but it's probably 30 or so
6 pages -- there's an inspection beginning on
7 BOP_MDL-2799241.

8 Do you see that?

9 A. 2799241?

10 Q. Yes.

11 And this is an inspection that you
12 prepared. Is that your signature?

13 A. No, that is not mine.

14 Q. Oh, it's not yours?

15 A. No.

16 Q. Do you recognize it? Whose is it?

17 A. No, I -- I don't recognize that
18 signature, and I'm looking at a date that's
19 next to it of July 23, 2012.

20 Q. Good catch. Okay. I was misreading
21 signatures. I thought maybe you had done that
22 one. I'm not going to ask any questions about
23 that since you didn't prepare it.

24 Continue on back in that exhibit --
25 go to MDL2796514. Are you with me?

1 MR. APPEL: I'm sorry. Which
2 exhibit are we looking at?

3 MR. BARNES: We're looking at
4 BOP_MDL2796514. It's an inspection dated May
5 23rd of 2017, Giant Eagle pharmacy in Warren,
6 Ohio.

7 MR. APPEL: I'm sorry. But which
8 exhibit packet is it in?

9 MR. BARNES: It's 17, Edwards 17.

10 Q. Probably from about 15 pages from
11 the back, Agent DiFrangia.

12 A. Yeah, I'm still searching.

13 Q. Unfortunately, these aren't in
14 sequential numbers.

15 A. Okay, I have it.

16 Q. This is an inspection that you
17 performed. Your name is on the second page, 2
18 of 4, Agent William DiFrangia.

19 A. Yes.

20 Q. Did you prepare this document?

21 A. Yes.

22 Q. All right. And you prepared this
23 document to record the results of your
24 inspection of Giant Eagle pharmacy 1419 on 2061
25 Elm Road, Warren, Ohio?

1 A. Yes.

2 Q. It says this is a category 3
3 barricade inspection. I think you told me
4 already what a barricade inspection was.

5 A. Yes.

6 Q. The second page of this exhibit
7 references the personnel Barbara Susan Carlson,
8 pharmacist, and Kellie Cleland, pharmacist?

9 A. Yes.

10 Q. Did you interact with either of
11 those pharmacists during this inspection?

12 A. I believe I interacted with Barbara
13 Carlson. I'm not sure about Kellie Cleland.

14 Q. Okay. And does this -- does this
15 barricade inspection document the results of
16 your inspection?

17 A. Yes.

18 Q. Was Pharmacist Carlson cooperative
19 with you?

20 A. Yeah. As far as I can remember, if
21 she was there, she was.

22 Q. Okay. Do you have any other
23 recollections about either of these pharmacists
24 in terms of having worked with them for any
25 reason in the past?

1 A. Yeah. I think I had requested
2 records from both of them in the past.

3 Q. And did they provide those records
4 and cooperate with you?

5 A. Yes.

6 Q. And the results of this inspection
7 at the end are no issues found; is that right?

8 A. Correct.

9 Q. So when you did an inspection and
10 wrote it up in these reports, if there was an
11 issue found, you would document it, correct?

12 A. Yes.

13 Q. I like the new inspection reports,
14 by the way. You don't have to decipher
15 handwriting.

16 A. Right.

17 Q. If you go about six pages later --
18 I'm looking for the next inspection report that
19 you did. It begins on -- six or eight pages
20 later -- BOP_MDL2796530.

21 A. What date are you looking at?
22 Sometimes that will be easier to spot it.

23 Q. Sure. December 18th of 2018, first
24 page.

25 A. Okay. Yes, December 18th, 2018.

1 Q. And is this another inspection
2 report showing the results of an inspection of
3 Giant Eagle pharmacy 1419, 2061 Elm Road,
4 Warren, Ohio, Trumbull County?

5 A. Yes.

6 Q. Now, this says, "Retail Pharmacy
7 Inspection" whereas the last one called it a
8 barricade inspection. So is this a more normal
9 type inspection being conducted here?

10 A. Yes. This is more of a -- more
11 inclusive inspection. The other one was just
12 specifically geared around the barricade
13 because I think we had mentioned that they had
14 an attempted break-in to the pharmacy.

15 Q. Got it. So on page 2 of this
16 inspection it shows, again, Pharmacist Carlson
17 and now another pharmacist, Nicole Deluco, as
18 well as several technicians. When you list
19 these individuals, are these individuals that
20 were there during your inspection?

21 A. For the most part. The way the
22 inspection guide is -- whoever the responsible
23 person is or pharmacy manager, their name is
24 always on there, whether they're present or
25 not, so I -- out of the pharmacists, one of two

1 was definitely present, maybe both of them, but
2 it like auto populates within the inspector,
3 the inspection software.

4 Q. Okay. And this now seems to be a
5 more in-depth listing of multiple things that
6 you looked for in this inspection, beginning
7 with the licensing requirement, number 1, which
8 we've talked about.

9 Do you see that?

10 A. Yes.

11 Q. And then you continued -- you look
12 at the responsible person issue. In fact, here
13 you noted that there was a change in responsible
14 person reporting to the board and you noted it
15 in your inspection report, correct?

16 A. Yes.

17 Q. And then you looked at the DEA
18 certificate again, looking to make sure that
19 they were all currently licensed; is that right?

20 A. Yes.

21 Q. In 2.1 you looked at record
22 availability. "Can the pharmacy produce a
23 detailed patient profile for the last 12 months
24 immediately upon request?" And you said "Yes"
25 and then you made an observation. Am I correct

1 that this is one indication of what you told me
2 earlier, that you were enforcing the patient
3 profile regulation that we went over?

4 A. Well, yes and no. The observations
5 that I put in there is something kind of
6 different. It was related to something
7 different, but that's in a way how we -- I was
8 able to ensure that that's being complied with.

9 Q. Okay. The next section, 2.3.1, is
10 relating to dispensing software, and you made an
11 observation of EPS. Why did you care about
12 dispensing software?

13 A. Well, we want to know who makes the
14 software, who -- you know, is it a Giant Eagle
15 system that they own or is it a third-party
16 vendor. There are times when maybe if a
17 pharmacist or someone with access is diverting
18 medication, they may have different levels of
19 access than other people, and, you know, these
20 things can be -- it could be helpful in further
21 investigations to know what the software is
22 that they're using.

23 Q. And was -- your observation was that
24 Giant Eagle was using EPS. Was that an
25 acceptable and satisfactory software --

1 dispensing software system as far as the board
2 was concerned?

3 A. Yes.

4 Q. On the next page, 2.3.4, "Shared
5 Dispensing Software: Is there a real time
6 online system and used for the review and
7 transfer of dispensing data? Yes. Observation?
8 Yes." Why did the board care whether it was a
9 real time online system?

10 A. Well, I think for the purposes of,
11 you know, we want to be able to ensure proper
12 drug utilization review is being conducted, and
13 if someone goes to one Giant Eagle, you want to
14 know that, you know, if they went to another
15 one, this way the same pharmacy at a different
16 location isn't dispensing the same medication
17 to someone.

18 Q. So having a real time online system,
19 as indicated here, is a good internal control
20 from the board's perspective?

21 A. Yes.

22 Q. Okay. In fact, it says here, "Does
23 the pharmacy's real time online system prevent a
24 patient from receiving more dispensings than
25 authorized by the original prescription?" And

1 you said, "Yes." So that's actually a control
2 built into the system that prevents diversion?

3 A. I can't say for sure if it's built
4 into the system or exactly how the system
5 works, but, you know, they -- it would be
6 something that -- how it would alert them, I'm
7 not exactly sure, but it does -- you know, they
8 are able to see that information.

9 Q. Okay. And then you continue, 2.3.6,
10 "Dispensing Record Accuracy. Are required
11 records of accountability being kept complete
12 and accurate in the dispensing software?" And
13 you said "Yes" here. Is that something the
14 board wanted to make sure pharmacies were doing,
15 keeping accurate dispensing records that could
16 be reviewed when necessary?

17 A. Yes.

18 Q. Now, 2.5 deals with ePositive
19 identification, and it references a paperless
20 positive ID system being used and whether it was
21 approved by the board. What is an ePositive
22 identification system?

23 A. Well, pharmacists are required to
24 provide a positive identification for
25 essentially every step of the dispensing

1 process, and generally the way that's captured
2 is with a -- with a wet ink signature or
3 initials, just a pharmacist writing her
4 initials, dating a prescription. So some --
5 some pharmacy chains -- Giant Eagle is one of
6 them -- they have adopted an ePositive ID
7 system, where they do not use a wet ink
8 signature on the prescription, it's done --
9 it's captured electronically, the positive ID
10 is. So that was approved, that had prior board
11 approval and that was -- that was done on
12 February 20th of 2015 at this Giant Eagle in
13 Elyria, and that shows as approval statewide
14 for their system.

15 Q. I see. And is that a good control
16 from the board's perspective, to have this
17 ePositive identification system?

18 A. Yes.

19 Q. And then your report continues
20 through various other areas dealing with the
21 physical and electronic barricades. Part 4
22 deals with the minimum standards on page 6 of
23 10. If you look at 4, number 7, "Is there
24 evidence to indicate a problem with staffing
25 levels?" And you had indicated in this

1 inspection "No." What was the board's concern
2 in this area as part of its inspections? What
3 was it looking at?

4 A. Well, I think if there is -- my
5 interpretation is that if there's -- if there's
6 some sort of staffing issue that is going to
7 affect patient safety.

8 Q. I see. So during your inspections
9 you would check into that, as indicated here?

10 A. Yeah, just based on my own
11 observations at the pharmacy.

12 Q. Okay. Section 5 of your inspection
13 indicates "Security." Number 1, "Is the
14 security of the pharmacy drug stock adequate to
15 detect and deter drug theft and diversion?" And
16 you indicated, "Yes." Can you describe for us
17 what this is all about?

18 A. Yeah. It's to ensure that they
19 have some processes in place; that if someone
20 does happen to divert medication or divert
21 records, that they can -- they can deter it,
22 and then if it does happen, that they can
23 detect it. So, you know, some of their systems
24 that they have in place, you know, maybe they
25 do some additional counts of medication or

1 something of that nature. Those are things
2 that -- you know, are going to deter and detect
3 the theft of medication and records also.

4 Q. We talked earlier in your deposition
5 about the security requirement regulation. Is
6 this part of your inspection a part of that,
7 determining compliance with the overall security
8 regulation?

9 A. Yes.

10 Q. Your reports -- this report
11 continues with a review of the library,
12 cleanliness, refrigeration, drug ordering
13 procedures. Are you following me?

14 A. Yes.

15 Q. And then 9.3 references "Electronic
16 Control II drug order receipt. When using an
17 electronic drug ordering system, is the pharmacy
18 creating a receipt that is electronically linked
19 to the original order?" And you said "yes" for
20 this inspection. What is this all about? What
21 are you -- what is this part of the inspection
22 geared towards?

23 A. Well, my interpretation is that
24 there is a receipt for any -- they order their
25 drugs, their Schedule II drugs, electronically.

1 They have to have a receipt of that and it has
2 to, you know, be electronically linked with the
3 order and -- the receipt of those drugs have to
4 be electronically linked.

5 Q. Is that an internal control that the
6 board wanted to make sure that the pharmacy was
7 complying with?

8 A. Yes.

9 Q. Now, you list in 9.4 wholesale
10 information, who was the wholesale drug
11 distributor utilized by this pharmacy, and it
12 says here "Cardinal." Why was that part of your
13 inspection? Why did the board care about who
14 the distributor is?

15 A. Again, this is my -- this is my own
16 interpretation, is that, you know, at some
17 point other investigations are going to come up
18 with Giant Eagle and, you know, we want to know
19 who's supplying them. Maybe there's an issue
20 with the wholesaler. Maybe in the event we
21 have to do an audit, like we had discussed
22 earlier, you have to know who the wholesale --
23 who the wholesaler is to conduct that audit.
24 Really it's just my guess, my interpretation is
25 that it could be needed for something in the

1 future and the information to have is good.

2 Q. Are you familiar with the drug
3 distributor Cardinal at the time -- at the time
4 you wrote this report did you know who Cardinal
5 was?

6 A. Yes.

7 Q. Paragraph 10 of your report
8 references improper dispensing -- dispensings.
9 "Is there evidence to indicate that a
10 prescription has been dispensed improperly?"
11 And the answer here was "No." What does this
12 mean with respect to your inspection? Why were
13 you looking at improper -- potential improper
14 dispensing and whether or not the pharmacy was
15 dispensing properly or improperly?

16 A. Well, I think, you know, really you
17 want to ensure that if a prescription has two
18 refills on it, two refills are given. Just an
19 example, you know, two refills are given, not
20 more, not less. If a prescription calls for 20
21 tablets of some sort of medication, you want to
22 ensure that all that is being done, all the
23 medicine is being done accurately pursuant to
24 the way the prescription is presented.

25 Q. I see. So when you did your

1 inspections, you actually looked at this area of
2 potential improper dispensing and would indicate
3 whether the pharmacy was complying or not
4 complying; is that correct?

5 A. Yes.

6 Q. And here there was no evidence that
7 this pharmacy had been dispensing improperly; is
8 that correct? Am I reading your inspection
9 report correct?

10 A. Correct.

11 Q. Part 11 of your report deals with
12 insufficient supervision. There's two
13 sub-parts. "Is there pharmacist supervision of
14 the dangerous drugs and other pharmacy employees
15 at all times while the pharmacy is open and
16 operating?" You had indicated here "No." What
17 does that mean? Am I reading this as a negative
18 or what did you mean here?

19 A. Well, from reading it, it seems --
20 it was probably answered incorrectly by myself
21 because I'm just guessing that if there was an
22 issue with pharmacist supervision of the
23 dangerous drugs, you know, we wouldn't have
24 just -- I wouldn't have just told them -- you
25 know, wouldn't have just indicated no on the

1 inspection guide. There would be some sort of
2 corrective action.

3 Q. When you fill out these reports, are
4 these inspection reports -- are they online and
5 you go through a checklist and fill it out
6 electronically?

7 A. Yes.

8 Q. Okay. But why even inquire about
9 this area, insufficient supervision? Why does
10 the board care about pharmacist supervision and
11 whether or not only pharmacists are performing
12 tasks requiring professional judgment?

13 A. Well, you know, again, my
14 interpretation is that, you know, legally you
15 cannot have a non-pharmacist practicing as a
16 pharmacist, so, you know, we can't allow a
17 pharmacy technician to review a patient profile
18 and do a drug utilization review because they
19 don't have any of the -- any of the education
20 and the background to do so. So I think that's
21 probably -- that's probably the importance of
22 that. And same thing with supervision similar
23 to one of the earlier points of the inspection
24 that we discussed where, you know, proper
25 supervision is going to address things like an

1 employee that may be potentially diverting
2 drugs or ensuring that, you know, prescriptions
3 are dispensed accurately and all those things
4 are being completed, such as like the drug
5 utilization review.

6 Q. Okay. So for this inspection,
7 setting aside the -- what you believe to be an
8 incorrect answer to 1, is my understanding that
9 in this inspection you found that this Giant
10 Eagle pharmacy was properly supervising as
11 required?

12 A. Yes.

13 Q. Okay. You also look in Section 12
14 at inventory records. During your inspections
15 do you ask the pharmacist for their inventory
16 records to make sure they're complying with the
17 inventory requirements that we went over?

18 A. Yes.

19 Q. And here it was okay because you
20 answered "Yes"?

21 A. Yes.

22 Q. 14 and 15 deal with illegal sales
23 and illegal purchases. As part of your
24 inspections were you making sure that the
25 pharmacy was only purchasing from licensed

1 distributors and wholesalers and that they were
2 handling returned stock correctly?

3 A. Yes.

4 Q. And here there was no problem; is
5 that correct?

6 A. That's correct.

7 Q. In 17.1 you actually look at their
8 drug utilization review software. Is that
9 right? Is that the purpose of this part of the
10 inspections?

11 A. Yes.

12 Q. And as part of that, you review
13 whether the pharmacists rely solely on the
14 dispensing software to perform the DUR for
15 prescription dispensing. Here you said "No."
16 What is the nature of this inquiry? What is the
17 board concerned about?

18 A. This is you -- what you don't want,
19 you don't want a pharmacist that is merely
20 relying on only the software to conduct a drug
21 utilization review. It's part of it. It's an
22 aspect of it. However, you want them to also
23 include their -- their clinical knowledge, some
24 of their clinical resources and their training
25 and their experience in conducting a drug

1 utilization review.

2 Q. So here am I reading this right you
3 were satisfied that the pharmacists weren't only
4 relying upon the dispensing software, and, in
5 fact, you observed pharmacists use clinical
6 knowledge in addition to software?

7 A. Yes, that's correct.

8 Q. Your inspection report continues,
9 Section 19, Improper Prescriptions: "Are the
10 prescriptions on file written in compliance with
11 4729-5-30?" You indicated "Yes" here. You were
12 enforcing that portion of the regulations; am I
13 reading that correctly?

14 A. Yes, that's correct.

15 Q. And that portion -- those
16 regulations deal with, what, are the
17 prescriptions being issued correctly?

18 A. Yes. That is part -- well, issued
19 as far as everything required is being put on
20 the physical prescription. Obviously, you
21 know, I don't know what is happening inside a
22 prescriber's office; however, what I do look at
23 is, you know, is the required information on
24 the prescription to be dispensed.

25 Q. Okay. And then there's -- after

1 that there's various other portions of your
2 inspections, including DEA numbers, outdated
3 drugs, prescription files. I'm going to go to
4 number 28, "Annual drug inventory. Has an
5 annual drug inventory been completed within the
6 specified time periods?" Here you indicate
7 "Yes" and you provide some observation of when
8 they were completed; is that right?

9 A. Yes.

10 Q. And am I reading this correctly that
11 in this inspection the Giant Eagle pharmacy
12 complied with the annual drug inventory
13 requirement?

14 A. Yes.

15 Q. And then the second to last page of
16 this inspection deals with oral prescriptions
17 being reduced to writing, a positive
18 identification system, qualified pharmacy techs
19 being employed. Are these just general areas of
20 your inspection that you checked to make sure
21 this pharmacy was complying with the
22 regulations?

23 A. Yes.

24 Q. 38 references counseling. You
25 checked here whether the pharmacy was complying

1 with the counseling regulation; is that right?

2 Go ahead.

3 A. I'm sorry. Did you say 38 or --

4 Q. I'm sorry. 36. Sorry.

5 A. Okay.

6 Q. We talked about the counseling
7 regulation before. Is this -- is this part of
8 your inspection documenting compliance with the
9 counseling regulation?

10 A. Yes.

11 Q. And here there was no problem?

12 A. Correct.

13 Q. 38 deals with OARRS, including
14 access and whether they're requesting an OARRS
15 report when appropriate and whether they were
16 using delegates to request. And here you say
17 yes, the pharmacists have access, yes, that they
18 are requesting OARRS reports when appropriate,
19 and no, they're not using delegates. Is that
20 your enforcement of the regulations related to
21 drug utilization review that we went over?

22 A. No. Well, that -- that portion is
23 specific to just OARRS, but, you know, as we
24 kind of talked about, OARRS is part of the drug
25 utilization review.

1 Q. All right. And then the remaining
2 portion of your report deals with
3 confidentiality, are there adequate safeguards
4 to protect confidentiality. Here you had no
5 problems with this pharmacy complying with the
6 confidentiality rules?

7 A. That's correct.

8 Q. And then you have Points of Emphasis
9 and then Inspection Affirmations.

10 Do you see that?

11 A. Yes.

12 Q. Now, in the summary you indicate
13 that there's a warning of some sort and I was
14 curious about the warning. Going through the
15 report, I didn't see anything that would --
16 called a warning. What's this -- what does that
17 mean there?

18 A. So it's -- it's probably difficult
19 to see just with the printed version, but if
20 you go to page 6 of 10, there was a -- I
21 believe this was a verbal warning, and, page 6
22 of 10 under Security, Section 5, and then
23 number 3.

24 Q. All right. And this relates to
25 where the records of accountability were being

1 stored outside the pharmacy barricade but within
2 the same physical location. Here's the
3 reference to the warning. I missed that. So
4 your observation was you inspected the cage in
5 the basement of the grocery store which houses
6 records. "The cage is secure however two U
7 bolts on the right side of the door and a bolt
8 mechanism on the left side of the door are
9 accessible from the outside of the cage; could
10 be removed and replaced without detection.
11 Corrective action. Ensure entire cage is both
12 secure and tamper evident." Was that the
13 purpose of the warning that's referred to at the
14 end?

15 A. Yes.

16 Q. All right. So am I reading this
17 right that this wasn't an actual break-in of the
18 records area, you just saw a potential risk that
19 somebody could break the bolts on the left side
20 of the door and you wanted them to be more
21 secure?

22 A. Yes. So in reading this, it would
23 have been not that they would break the bolts,
24 but they could remove the bolts, remove records
25 from within that cage, and then reattach the

1 bolts.

2 Q. Okay. But that, actually, to your
3 knowledge, hadn't happened, you just said make
4 it so that nobody could even remove the bolts?

5 A. Correct.

6 Q. All right. And did this pharmacy
7 comply with that request that they make those
8 bolts more secure?

9 A. I can't answer that because I don't
10 believe I have looked at that cage since this
11 inspection. They were not given a written
12 warning. It was just a verbal warning.

13 Q. Okay. All right. But otherwise
14 this inspection was good, am I correct, in terms
15 of all the areas we went over?

16 A. Yes.

17 Q. Did you consider it a good
18 inspection despite the -- they could have had
19 better bolts in the basement cage?

20 A. Yes, I did.

21 Q. If you go two pages after that, I
22 think I've found your name on another document
23 dated September 18, 2019, BOP_MDL2796412.

24 A. Yes.

25 Q. This says, "Property receipt," and I

1 think you told me earlier this isn't necessarily
2 an inspection, it's just going to the pharmacy,
3 telling the pharmacist you want records here of
4 Dr. Skiffey, it looks like, and they give you
5 the records and you document it with a receipt,
6 correct?

7 A. That's correct.

8 Q. All right. And at the end you say,
9 "No issues found." Am I reading that right that
10 you got the records you wanted, the pharmacy
11 cooperated and gave you anything that you
12 needed?

13 A. That's correct.

14 Q. The last inspection report is
15 actually a property receipt with your name --
16 it's the next page -- September 18th of 2019.
17 It looks like the same date. It looks like you
18 went to another Giant Eagle pharmacy in Warren
19 and got records with respect to Dr. Skiffey
20 again. So same type of thing going on here;
21 it's not an inspection, it's picking up of
22 records?

23 A. Yes, that's correct.

24 Q. And, again, Giant Eagle pharmacists
25 provided you with the records and cooperated

1 with you?

2 A. Yes.

3 Q. Have you inspected Giant Eagle
4 pharmacies outside of Trumbull County?

5 A. Yes.

6 Q. And am I correct that those
7 inspections were generally good inspections with
8 cooperative pharmacists, complying with whatever
9 you wanted and cooperating with you?

10 A. Yeah. As far as I can recall, the
11 pharmacists are always compliant and helpful.
12 You know, there probably was a written warning
13 issued or a verbal warning to the best that I
14 can recall.

15 Q. Agent DiFrangia, as far as you're
16 concerned, did Giant Eagle meet the requirements
17 for the licenses for its store and the renewal
18 of its licenses at all times with no license
19 ever being suspended or revoked?

20 A. Yeah. As far as I'm concerned,
21 they have.

22 Q. Did Giant Eagle pharmacies, from
23 your perspective, meet the security requirements
24 of the regulations at all times?

25 A. Yes. And if -- if there was a

1 minor portion where they didn't, corrective
2 action was given and they would address that.

3 Q. In your experience, did you observe
4 Giant Eagle pharmacies having even better
5 controls than those required by the regulations?

6 MR. WEINBERGER: Objection.

7 A. Yeah, as -- as far as I can recall,
8 you know, they were conducting their controlled
9 substance inventories when required. I can't
10 recall if they were doing it more.

11 Q. All right. Do you recall, in your
12 experience with Giant Eagle pharmacies, ever
13 being sanctioned or suspended or cited for
14 failure to meet the Ohio regulatory
15 requirements?

16 A. As far as I'm aware, no.

17 Q. Were Giant Eagle pharmacies
18 adequately staffed based upon your involvement
19 with them?

20 A. Yes. From what I recall, they
21 were.

22 Q. Did they have licensed pharmacists
23 who -- who were experienced and qualified to
24 work as pharmacists in the Giant Eagle
25 pharmacies?

1 A. Yes.

2 Q. Did they have trained and supervised
3 pharmacy technicians in the pharmacies based
4 upon your inspections?

5 A. Yes.

6 Q. Did the Giant Eagle pharmacies
7 comply with the manner of processing
8 prescription regulatory requirements, including
9 performing drug utilization reviews, as far as
10 you know?

11 A. As far as I'm aware, they have.

12 Q. Based upon your experience, do you
13 have any evidence that Giant Eagle pharmacies
14 ever filled illegitimate prescriptions?

15 MR. WEINBERGER: Objection.

16 Q. You can answer.

17 A. Well, I guess -- yeah, they would
18 have because I'm sure -- I believe I've seized
19 prescriptions from a Giant Eagle that -- now
20 specifically, Dr. Prommersberger prescriptions,
21 that after reviewed by a medical expert and
22 deemed issued for no legitimate medical reason,
23 you know, we seized those because they were
24 dispensed at a Giant Eagle pharmacy or, you,
25 know, instances of that.

1 Q. I see, but those types of
2 investigations, I think you told me earlier,
3 were also prompted by Giant Eagle and other
4 pharmacists, correct? They --

5 MR. WEINBERGER: Objection.

6 MR. BARNES: Can I finish my
7 question, Pete?

8 MR. WEINBERGER: I thought you were
9 finished. Sorry.

10 Q. Going back to your prior testimony,
11 pharmacists, including at Giant Eagle, would
12 initiate leads and investigations for doctors
13 that they thought were behaving inappropriately?

14 A. Yes.

15 Q. And that from time to time would
16 lead to investigations and you would go back to
17 the pharmacies to get the prescription records,
18 correct?

19 A. That's correct.

20 Q. And then using pharmacy specialists
21 and medical professionals in your
22 investigations, you were able to determine that
23 some of the prescriptions were illegitimate; is
24 that correct?

25 A. Correct.

1 Q. So is that what you mean, that in
2 some instances you were able to later determine
3 that some prescriptions were illegitimate
4 because your investigation showed that that
5 doctor was behaving inappropriately?

6 A. Yes.

7 Q. Agent DiFrangia, based upon your
8 experience with the Giant Eagle pharmacies and
9 pharmacists, were the Giant Eagle pharmacies
10 operating lawfully as far as you know?

11 MR. WEINBERGER: Objection.

12 A. Yes. As far as I know, they were.

13 Q. And were Giant Eagle and its
14 pharmacists actively assisting law enforcement
15 and the board with anti-diversion efforts?

16 MR. WEINBERGER: Objection.

17 A. Yes. As far as I've been involved
18 with, they have.

19 Q. I have similar questions for the
20 other pharmacy Defendants, CVS, Walgreens,
21 Walmart and Rite-Aid. Were those pharmacies and
22 pharmacists at those pharmacies actively
23 assisting law enforcement with anti-diversion
24 efforts?

25 MR. WEINBERGER: Objection.

1 A. Yes.

2 Q. And similar to the question I just
3 asked you about Giant Eagle, were those other
4 chain pharmacies operating lawfully as far as
5 you know?

6 MR. WEINBERGER: Objection.

7 A. Yes. As far as I'm aware, they
8 were.

9 Q. And were they, those other
10 pharmacies, the other pharmacy Defendants, they
11 were complying with the manner of processing
12 prescription regulations and the other
13 regulations that we just went over?

14 MR. WEINBERGER: Objection.

15 Q. I'm sorry?

16 A. As far as I'm concerned, yes, they
17 were.

18 Q. And were those other pharmacies also
19 adequately staffed with trained and licensed
20 pharmacists and pharmacy techs?

21 MR. WEINBERGER: Objection.

22 A. To my knowledge, they were.

23 Q. And did these other pharmacies meet
24 the security requirements in the Ohio
25 regulations at all times as far as you're

1 concerned?

2 MR. WEINBERGER: Objection.

3 A. Yes.

4 Q. And did these other pharmacies also
5 meet the requirements, the licensing
6 requirements for its stores and for renewal of
7 its licensing for these stores at all times?

8 MR. WEINBERGER: Objection.

9 A. Yes. As far as I'm aware, they
10 have.

11 Q. Did you, in your experience, Agent
12 DiFrangia, including all your investigations --
13 were you able to see a difference between chain
14 pharmacies, on the one hand, and how they
15 operated, and independent pharmacies, on the
16 other hand, and how they operated? Did you see
17 any difference between the nature of controls at
18 one versus the other? Do you have any general
19 observations based upon your experience?

20 MR. WEINBERGER: Objection.

21 A. Yes. Based on my experience, I
22 would say that, you know, I think if you're
23 looking at a retail pharmacy, you may see a
24 situation where a pharmacist is the owner and
25 maybe they may not be inclined to turn away a

1 prescription due to potential monetary reasons
2 or, you know, they don't want to lose the
3 business, whereas, you know, I think that's a
4 little bit -- it happens more with chain
5 pharmacies because it's not the pharmacist's
6 business, they're not the owner of the
7 pharmacy, but they're, you know, protecting
8 their license and their reputation. So I
9 guess, based on that, you know, I think there
10 is a little bit of a difference, the way they
11 operate.

12 Q. In your experience did you observe
13 in your investigations diversion occurring at
14 independent pharmacies?

15 A. Yes.

16 Q. More so than chain pharmacies?

17 MR. WEINBERGER: Objection.

18 A. Well, it depends what type of
19 diversion. I happen to think -- this is just
20 my own opinion. It's not based on data or
21 anything of that nature. But sometimes I think
22 that independent pharmacies are targeted by
23 someone with fraudulent prescriptions. They
24 may think that they're able to get something
25 filled there. Some of them, they do fill it.

1 Some of them don't, you know, as far as stuff
2 of that nature. But I think the chain
3 pharmacies, they definitely report to me more
4 internal theft than any of the independent
5 pharmacies.

6 MR. WEINBERGER: Objection. Move
7 to strike.

8 Q. Have you ever investigated an
9 internet pharmacy?

10 A. No. No, not that I -- not that I
11 recall.

12 MR. BARNES: I have nothing
13 further, Agent DiFrangia. I'd like to take a
14 five-minute restroom break. And I don't know
15 if my co-counsel for the other pharmacy
16 Defendants are going to have any questions.
17 Maybe they want to say so now or if they want
18 to think about it over the break.

19 MR. BEISELL: I'll have a few
20 questions, Bob.

21 MR. WEINBERGER: Well, I think I'm
22 entitled to cross this witness now before
23 anybody else asks further questions.

24 MR. BARNES: What do you base that
25 on, Pete? I thought we would finish the

1 Defendants and then the Plaintiffs could go.

2 MR. WEINBERGER: I disagree.

3 MR. BARNES: Kate, do you have any
4 questions?

5 MS. SWIFT: I'm happy to let Pete
6 go first. That's fine. I don't know if I'm
7 going to have questions or not.

8 MR. BARNES: All right. Is
9 everybody else happy to have Pete go first?

10 MR. BEISELL: Fine by me.

11 THE VIDEOGRAPHER: We're going to
12 go off the record at 1:39.

13 (Recess had.)

14 THE VIDEOGRAPHER: We are back on
15 the video record at 1:49.

16 EXAMINATION OF WILLIAM DiFRANGIA

17 BY MR. WEINBERGER:

18 Q. Agent DiFrangia, my name is Peter
19 Weinberger and I'm privileged to represent Lake
20 and Trumbull Counties in this case, and so I
21 have a few questions to ask you on
22 cross-examination, okay?

23 A. Okay.

24 Q. We have never met before, have we?

25 A. No.

1 Q. As I understand your work history,
2 you have been an employee of the Board of --
3 Ohio Board of Pharmacy since November of 2016,
4 correct?

5 A. Yes.

6 Q. So in terms of your observations
7 relating to inspections and interactions with
8 the pharmacy Defendants or their employees, as
9 an agent for the Ohio Board of Pharmacy, that
10 has occurred since November of 2016 to the
11 present time, correct?

12 A. Yes.

13 Q. And as I understand your -- let me
14 ask you this: Since COVID, since the COVID
15 pandemic, have the number of inspections, full
16 inspections of pharmacies, been reduced in
17 Trumbull County?

18 A. Yes, by me, definitely for myself.

19 Q. And why is that?

20 A. Well, just with the pandemic, you
21 know, we're trying to limit our exposure and,
22 you know, limit everyone else's exposure to
23 anything.

24 Q. Okay. So in terms of your testimony
25 that was elicited from you over the last ten

1 minutes or so of questioning regarding your
2 views of the conduct of retail pharmacy
3 Defendants in this case, they're limited to your
4 experience since November of 2016, correct?

5 A. Yes; however, I've had interactions
6 with pharmacists and pharmacies prior to that.

7 Q. Right. But in terms of the kind of
8 inspection that you did, that you testified to
9 in 2018 at this Giant Eagle, that full
10 inspection, reviewing all these various systems,
11 pretty much your experience with respect to that
12 broad range of things that you looked at in your
13 inspections would be limited to your experience
14 since November of 2016, right?

15 A. That's correct.

16 Q. And when you do an inspection once a
17 year, that's really a snapshot of a couple of
18 hours of experience with a pharmacy at that
19 particular time, correct?

20 A. That's correct.

21 And, sir, I can't see you. I don't
22 know if it --

23 Q. Oh, I'm sorry. My video went off.
24 Sorry. Is that better?

25 A. There we go. Yes.

1 Q. So when you do a full inspection,
2 like you did in 2018, that's just really a
3 couple-hour snapshot in time, correct?

4 A. Yes.

5 Q. And from what I can see from the
6 records, at least -- from what I can see in the
7 records, the only time that you did a full
8 inspection of a pharmacy in Trumbull County was
9 in 2018, correct?

10 A. Well, that's just for a Giant Eagle
11 pharmacy.

12 Q. I meant a Giant Eagle pharmacy.
13 Sorry.

14 A. Yes. Yes, that's correct.

15 Q. Now, do you have any information or
16 recollection at this point as to how many full
17 inspections you did since 2016 with respect to
18 the other pharmacy Defendants in Trumbull
19 County? Would it be a handful?

20 A. Yes. It's probably a handful for
21 the other Defendants.

22 Q. And, likewise, with respect to those
23 inspections, it would be a snapshot moment in
24 time, assuming that the inspection took a couple
25 of hours on one particular day in a year,

1 correct?

2 A. Yes, that's correct.

3 Q. Now, it appears from your testimony,
4 and appropriately so, that you are very familiar
5 with the regulations of the -- that the Board of
6 Pharmacy operates under with respect to
7 dangerous drugs or controlled substances,
8 correct?

9 A. Yes.

10 Q. And controlled substances are
11 considered in the state of Ohio to be dangerous
12 drugs, right?

13 A. Yes.

14 Q. And they are dangerous drugs because
15 they can be addictive, correct?

16 A. I think they're dangerous drugs --
17 controlled substances are dangerous drugs
18 because they're issued by a prescriber and
19 they're dispensed from a pharmacy, different
20 from something that you could purchase over the
21 counter.

22 Q. But particularly with respect to
23 opioid prescriptions or opioid prescription
24 drugs, they are dangerous because they can be
25 addictive, correct?

1 A. Yes.

2 Q. And because these drugs are
3 dangerous and can be addictive, they have a
4 propensity or carry a risk of being diverted,
5 correct?

6 A. Yes.

7 Q. And if you have addiction and
8 diversion, that leads -- that can lead to
9 problems with the safety associated with those
10 drugs, right?

11 A. Sure.

12 Q. In fact, the regulations that you
13 enforce for the Board of Pharmacy with respect
14 to opioid prescriptions are intended, if
15 complied with, to save lives, correct?

16 A. I would assume that's what the
17 intention is.

18 Q. These regulations are intended to
19 save lives and attempt to reduce the risk of
20 misuse or abuse of opioid prescription drugs,
21 correct?

22 A. That's how I interpret many of
23 them.

24 Q. And so any -- would you agree that
25 any retail pharmacy chain who has a license to

1 dispense opioid prescription drugs should
2 realize that compliance with the laws is
3 important in order to save lives and reduce the
4 risk of opioid misuse or abuse, correct?

5 MR. BEISELL: Objection.

6 A. Yes.

7 Q. Now, are you familiar with the
8 Controlled Substances Act, the federal
9 Controlled Substances Act and its regulations?

10 A. Yes.

11 Q. And is it your job to enforce the
12 Controlled Substances Act and its regulations as
13 an agent of the Board of Pharmacy?

14 A. I think it -- parts of it fall
15 within our duties. I mean, we are tasked with
16 enforcing United States Federal Code, so I
17 would think that kind of falls within it.

18 Q. But would you agree with me that
19 primarily your role as an agent for the Board of
20 Pharmacy is to carry out the obligations or, I
21 should say, enforce the laws of the State of
22 Ohio and its regulations?

23 A. Yeah, I would say that's our
24 primary goal, is to enforce the rules of the
25 State of Ohio.

1 Q. Earlier Mr. Barnes asked you about
2 Defendants' DiFrangia Exhibit 9.

3 MR. WEINBERGER: James, can you
4 bring that exhibit up on the screen?

5 Q. And if you want to pull that out of
6 your notebook or you can look at the screen
7 together with me. However you want to do it,
8 Agent DiFrangia, is okay with me.

9 A. I'll just use the screen.

10 Q. All right. This DiFrangia
11 Defendants' Exhibit 9 apparently is a document
12 that the pharmacy Defendants received from the
13 Board of Pharmacy pursuant to a subpoena that
14 they issued on the board.

15 Do you got that so far?

16 A. Yes.

17 Q. All right. And when you were asked
18 about this document by Mr. Barnes, you told him
19 that this appears to be how one might approach
20 investigating a prescribing issue with a
21 prescriber. That wasn't your exact testimony
22 but did I basically get your testimony correct?

23 A. Yes.

24 Q. All right. I want to go through
25 this with you -- well, let me ask you this:

1 Looking through this document -- and, James, if
2 you would go back to the full document,
3 please -- it has two sections. One is Data
4 Anomalies and the other is a General Workflow.
5 First of all, can you see that on your scene?

6 A. Yes.

7 Q. And looking at the 21 items of data
8 anomalies, do these appear to be red flags
9 regarding opioids prescribed by doctors that are
10 within the definition of red flags, as you
11 understand it?

12 MR. BARNES: Object to form.

13 A. I would say that they are --
14 they're anomalies. I don't know that they're
15 necessarily red flags, but when you start to
16 put some of them together, then you could be
17 looking at a potential red flag prescribing
18 incident.

19 Q. Right. And so when you're -- when
20 you're looking at a red flag prescribing
21 incident, what you're looking for are signals
22 that a particular prescription might not be
23 being prescribed for a legitimate medical
24 purpose, correct?

25 A. That's correct.

1 Q. And this list appears to be an
2 analysis or things that one might analyze in
3 looking at a prescriber's prescribing habits,
4 correct?

5 A. Correct.

6 Q. So if a prescriber has a large total
7 number of patients for which they're prescribing
8 opioids, that's a potential anomaly or red flag,
9 correct?

10 A. Yes.

11 Q. And if -- the analysis of the daily
12 patient breakdown, do you know what that refers
13 to?

14 A. Yeah. My guess is that's probably
15 relating to, you know, if you could break it
16 down to how many patients are being seen in a
17 day for controlled substances.

18 Q. Right. And the large overall volume
19 of prescriptions, what does that refer to?

20 A. That's just a -- that's just your
21 lump sum of controlled substance prescriptions
22 issued by a prescriber over a period of time.

23 Q. And number 4 seems pretty obvious,
24 "Patients with drug related criminal histories."
25 It is what it says, right?

1 A. Exactly.

2 Q. Now, I'm interested in number 5,
3 "Prescribing of similar drugs in groups," and
4 there's a subsection, "Cocktails." What does
5 that refer to?

6 A. My guess, the way I'm interpreting
7 this, is let's say a prescriber is prescribing
8 a short-acting, pain-relieving medication in
9 addition to a long acting -- long-acting,
10 pain-relieving medication.

11 Q. Now, why is that a potential anomaly
12 or red flag?

13 A. Well, you know, it could be
14 warranted if needed, but I guess if it's
15 something that happens over time, over multiple
16 patients, then it could be concerning that
17 instead of maybe a segment of patients getting
18 one large amount of prescription medication,
19 they're getting a prescription for two
20 medications, you know, potential opiates or
21 something of that nature.

22 Q. Number 6 -- and the cocktails,
23 there's actually a Section 9 that deals with
24 drug cocktails. We'll get to that in a second.
25 Number 6 is "Prescriber at unusual distance from

1 pharmacy." Why is that or what is it about that
2 that makes it an anomaly or potential red flag?

3 A. Really just based on maybe the
4 patient lives near the pharmacy but they go --
5 they travel an hour to see a prescriber when in
6 theory they probably pass several prescribers'
7 offices in doing so. So what is -- what is --
8 why is that patient driving an hour, passing
9 several different prescribers' offices, to see
10 that one prescriber, and then maybe coming back
11 to a pharmacy near their residence to get the
12 medication dispensed?

13 Q. Meaning that there's a -- that might
14 raise the suspicion that the subscriber is
15 either a pill mill doctor or someone who is
16 overprescribing to certain patients, true?

17 A. Yes, true.

18 Q. Number 7, "Purchasing drugs with
19 cash (when some form of insurance, Medicare or
20 Medicaid, was previously used)." Why is that an
21 anomaly or red flag?

22 A. Well, if you have commercial
23 insurance or, you know, some sort of public
24 insurance, you would use that instead of paying
25 money out of your pocket. So, you know, why --

1 it leaves one to ask why are they paying cash
2 when they have insurance for prescription
3 medications.

4 Q. Is it fairly well-known in the law
5 enforcement sector of our country that payment
6 of prescription drugs in cash is often related
7 to potential illegal use of opioids?

8 MR. BEISELL: Objection.

9 A. Yeah. My opinion is that it is.

10 Q. When drugs are -- when opioid
11 prescription drugs are diverted and the
12 diversion is that the patient who's picked up or
13 had the prescription filled is then taking all
14 or part of that prescription and selling it on
15 the streets, is it well-known among law
16 enforcement that those transactions take place
17 utilizing cash?

18 A. Yes.

19 Q. And the people that are filling
20 those prescriptions and obtaining cash payments
21 when they divert those prescription pills on the
22 streets are often also people that have an
23 abundance of cash that can then be used to pay
24 for the prescriptions, correct?

25 A. Yes. That's possible.

1 Q. Now, number 8, "Multiple
2 prescriptions for similar substances (oxycodone
3 or oxycodone APAP)," what does that stand for?

4 A. Oxycodone APAP is an abbreviation
5 for oxycodone acetaminophen.

6 Q. So that's a combination oxycodone
7 drug, right?

8 A. Yes.

9 Q. Now, why is it that multiple
10 prescriptions for similar substances is an
11 anomaly or potential red flag?

12 A. I think to me I interpret number 8
13 as being similar to number 5, where, you know,
14 you may have a prescriber that is prescribing
15 one patient oxycodone and then also giving a
16 prescription for oxycodone acetaminophen.

17 Q. Now, number 9 is "Prescribing drug
18 cocktails (aka Trinity or Holy Trinity),
19 combinations of benzodiazepines with opiate
20 based drugs." And then there's a list of other
21 drugs, hydrocodone, oxycodone, a pain reliever,
22 then drugs like benzodiazepine, which are
23 anti -- those are anti-anxiety drugs, right?

24 A. Yes.

25 Q. And a muscle relaxant. That's the

1 generic name for Soma, correct?

2 A. Yes.

3 Q. And why is this a potential red
4 flag?

5 A. Well, you know, again, based on my
6 opinion, my conversations with pharmacists and
7 prescribers, these are just -- these are --
8 it's a combination that's kind of, I guess you
9 could say, frowned upon in the medical
10 community. I'm not a doctor. However, that's
11 just the information that's been told to me by,
12 again, prescribers and pharmacists. You know,
13 there's some potential negative interactions
14 that could happen with this combination, but
15 that's just information that's been relayed to
16 me as an agent.

17 Q. Right. And that's because it's
18 well-known in the medical community, in the law
19 enforcement community, that the combination of
20 these three drugs are an indication of abuse and
21 potential diversion, correct?

22 MS. SWIFT: Objection. Foundation.

23 MR. BARNES: Object to the form of
24 the question.

25 Q. Go ahead. You can answer.

1 A. Yes, that's correct.

2 Q. Number 10, "Prescriber does not fit
3 the scope of practice for drugs prescribed,"
4 what does that mean?

5 A. You know, that's a prescriber
6 that's maybe prescribing a large amount of
7 medication that's just not in their scope. So
8 I guess as an example, like a dentist that's
9 prescribing a large amount of amphetamine
10 salts. You know, they're scheduled
11 medications, they're stimulants. They really
12 don't fit their -- fit into their scope of
13 practice.

14 Q. Can you give me any other examples
15 of that?

16 A. Yeah. You know, maybe a -- you
17 know, it could be -- it could be that a family
18 doctor or family physician prescribing a very
19 large amount of opiates. They're permitted to
20 prescribe those; however, you know, it could be
21 so many that, you know, potentially out of
22 their scope of practice.

23 Q. So these other -- I'm going to group
24 these together and just ask you, from 11 to 21,
25 are these all well recognized by law enforcement

1 and pharmacists as red flags that might indicate
2 a suspicious subscription?

3 MR. BARNES: Object to form.

4 A. Yes, I believe they are.

5 Q. And from your experience in law
6 enforcement, going back many years before you
7 were with the Board of Pharmacy, was it your
8 experience and knowledge that these 21 described
9 anomalies were fairly well known in law
10 enforcement as potential red flags for
11 suspicious prescription or a problematic
12 prescription?

13 MR. BARNES: Object to form.

14 A. Yes.

15 Q. Now, from your knowledge and
16 experience, how many years has it been known
17 that these are -- these are all potential red
18 flags or anomalies associated with opioid
19 prescriptions?

20 MR. BEISELL: Objection.

21 A. Well, you know, I can really only
22 -- I can really only account for my own -- my
23 own knowledge and my own experience, and
24 that's -- that's probably going back to about
25 2013, 2014.

1 Q. All right. Fair enough.

2 Now, looking at these -- at these
3 21 items of potential red flags, would it be
4 fair to say, Agent DiFrangia, that the retail
5 pharmacy chains have information regarding all
6 of these potential anomalies within their own
7 dispensing data?

8 MR. BARNES: Object to form. Lack
9 of foundation.

10 MR. WEINBERGER: I'll withdraw that
11 question.

12 Q. You have indicated that during the
13 course of your full inspections of pharmacies,
14 you have a chance to look at the pharmacy's own
15 dispensing data, correct?

16 A. Yes.

17 Q. And I'm assuming that what that
18 means is that you can look into their computer
19 systems, look at their screens and look into
20 their computer systems and see what dispensing
21 data is available, correct?

22 A. Yes.

23 Q. Including some of the fields of data
24 that's available through the computer, right?

25 A. Some of the fields.

1 Q. So do you know, Agent DiFrangia,
2 that for -- well, let's just say for the last 20
3 years whether or not the retail pharmacy
4 Defendants in this case have been storing
5 dispensing data in their systems?

6 MR. BARNES: Object to form.

7 A. I'm sorry. Do I know that?

8 Q. Right.

9 A. No, I don't know that.

10 Q. Since 2013 have you known that the
11 retail pharmacy chains store their dispensing
12 data in their systems?

13 MR. BARNES: Same objection.

14 Q. Go ahead. You can answer.

15 A. Yes, I'm aware they store their
16 dispensing data in their -- in their dispensing
17 systems.

18 Q. In the course of your interaction
19 with any of the retail pharmacies during your
20 annual inspections, have you ever inquired of
21 any of the pharmacists whether they are provided
22 with corporate analysis of dispensing data?

23 A. No, I don't know that I've ever
24 asked that during an inspection.

25 Q. Have you ever asked them whether

1 they receive reports from their corporate
2 offices on how to use -- or policies on how to
3 use dispensing data to analyze the data
4 anomalies and red flags that are listed on
5 Exhibit 9?

6 A. I have never asked that of them.

7 Q. If there was dispensing data that
8 could be analyzed to look at these various
9 anomalies, that would be helpful to the
10 pharmacist in carrying out their duties to only
11 dispense prescription opioids that are for
12 legitimate medical practice, correct?

13 MR. BARNES: Objection. Lack of
14 foundation.

15 A. You know, I don't know if that
16 would be helpful because I'm not a pharmacist.

17 Q. All right. Fair enough.

18 But at least -- if the dispensing
19 data provided a window into the ability to
20 analyze any one of these 21 red flags or
21 anomalies and that could be provided to the
22 pharmacist, that would potentially be helpful
23 to the pharmacist in carrying out their job,
24 correct?

25 MR. BARNES: Same objection. Asked

1 and answered already.

2 A. It could be, but again, I'm not a
3 pharmacist and I don't know that I could answer
4 that.

5 Q. Well, you're familiar with the
6 obligation -- what's called the corresponding
7 obligation or responsibility on the part of the
8 pharmacist, correct?

9 A. Yes.

10 Q. I mean, the pharmacist, in the chain
11 of dispensing the drugs, is the last line of
12 defense, correct?

13 MR. BARNES: Object to form.

14 A. Yes.

15 Q. The answer is yes?

16 A. Yes.

17 Q. The pharmacist receives a
18 prescription that's presumably written or
19 ordered by a physician and then has to undertake
20 his or her own corresponding responsibilities to
21 ensure that that prescription is filled in
22 accordance with the law, correct?

23 A. Yes.

24 Q. And that is particularly true with
25 respect to dangerous drugs, such as opioid

1 prescriptions, correct?

2 A. Yes.

3 Q. Because as the last line of
4 defense -- the pharmacies and the pharmacists is
5 the last step in providing prescription opioids
6 to the public, correct?

7 MR. BEISELL: Objection. Form.

8 A. Yes.

9 Q. Now, with respect to these data
10 anomaly and red flags on DiFrangia Defendants'
11 Exhibit 9, does OARRS -- does the data in OARRS
12 have the potential for providing the information
13 to analyze these data anomalies?

14 A. Yes, it does.

15 Q. And earlier you testified that there
16 are limits in OARRS in terms of what a
17 pharmacist can obtain versus what you can obtain
18 by way of either a subpoena or by utilizing
19 OARRS as an agent for the Board of Pharmacy,
20 correct?

21 A. Correct.

22 Q. And have you, Agent DiFrangia, ever
23 analyzed a retail pharmacy chain's data,
24 dispensing data, to see how much information
25 that data has that might identify some of these

1 data anomalies?

2 A. I mean, I have reviewed data for
3 retail pharmacies, but I don't know that I've
4 necessarily reviewed it for data anomalies.
5 You know, I've reviewed it for trying to find a
6 certain prescription or something of that
7 nature, but as far as I recall, I don't know
8 that I've ever reviewed a retail chain
9 pharmacy. I've done retail independent
10 pharmacies but not a retail chain pharmacy.

11 Q. So when you testified earlier that
12 with respect to your 2018 full inspection of the
13 Giant Eagle pharmacy, that you looked at and
14 approved their dispensing data system, that was
15 done on a very limited basis, correct?

16 MR. BARNES: Object to form.

17 A. Yes. It is a -- it's a limited
18 basis.

19 Q. Well, when you say "limited," what
20 does it mean? I mean, let's assume that that
21 inspection, and I think the records reflect, was
22 about three and a half hours to answer all of
23 those 40 or so questions that are in that form.
24 How much time did you actually spend actually
25 looking and reviewing dispensing data of the

1 pharmacy, of that particular Giant Eagle
2 pharmacy?

3 A. I can't recall.

4 Q. A matter of a minute or two?

5 A. I can't recall. You know, we
6 looked at the dispensing software. I think in
7 that inspection I reviewed a patient's profile,
8 but, you know --

9 Q. Well, with respect to the latter
10 part of that answer, that's -- I'm glad we got
11 to that. You said -- you made the comment that
12 you believed that the Giant Eagle, based upon
13 that inspection, complied with the requirements
14 of the patient profile in terms of the data
15 that's retrievable for that, correct?

16 A. Yes.

17 Q. That's what you testified to, right?

18 A. Yes.

19 Q. But what you actually did is you
20 looked at one patient, one patient's profile,
21 correct?

22 A. Yes.

23 Q. You didn't look at or review 20
24 patients, 50 patients, a hundred patients, and
25 look to see whether or not the drug utilization

1 profile was accurate or proper, correct?

2 MS. SWIFT: Object to the form.

3 Leading.

4 MR. WEINBERGER: Of course I'm
5 leading. I'm cross-examining him.

6 MS. SWIFT: Okay. Well, if your
7 position is that this is a hostile witness to
8 Plaintiffs -- is that what you're saying, Pete,
9 the Board of Pharmacy is a hostile witness?

10 MR. WEINBERGER: No, I'm not saying
11 he's a hostile witness, Kate. What I'm saying
12 is that you've called him on -- you've called
13 him for deposition as if under direct and I'm
14 entitled to cross-examine the witness.

15 MS. SWIFT: My objection stands.
16 Leading.

17 MR. WEINBERGER: Okay. Very good.

18 Q. So you looked at one drug
19 utilization patient profile, correct?

20 MS. SWIFT: Objection.

21 A. From what I recall, yes.

22 Q. And then you made a judgment based
23 upon that one review -- and I'm not criticizing
24 you for that, but I just want to be clear. You
25 made a judgment based upon the review of one

1 patient profile drug utilization review that
2 that particular Giant Eagle store was in
3 compliance, right?

4 MR. BEISELL: Objection.

5 MR. BARNES: Object to form.

6 A. Typically I follow up with
7 questions, such as can you provide this
8 information, how long, how far back does it go,
9 are you able to provide it, and, you know, I
10 take all that into account.

11 Q. Fair enough.

12 But in terms of actually looking at
13 what a particular pharmacist working for Giant
14 Eagle pharmacy actually did or does, you were
15 looking at, first of all, one snapshot in time,
16 and in terms of the patient profile, one
17 patient profile, correct?

18 MR. BARNES: Objection. Asked and
19 answered.

20 MS. SWIFT: Object to form.

21 Q. You can answer.

22 A. Yes, it's a snapshot in time.

23 Q. Now, do you believe that a retail
24 chain pharmacy's dispensing data could develop a
25 prescriber profile based upon that data?

1 MR. BARNES: Objection. Lack of
2 foundation.

3 A. I believe that it could.

4 MR. APPEL: Pete, this is Henry
5 Appel. Do you mind if we take a few minutes
6 just so I can touch base with my client
7 briefly, take five minutes, ten minutes?

8 MR. WEINBERGER: Sure.

9 MR. APPEL: Thank you.

10 THE VIDEOGRAPHER: We're going off
11 the record at 2:27.

12 (Recess had.)

13 THE VIDEOGRAPHER: We are back on
14 the record at 2:37.

15 BY MR. WEINBERGER:

16 Q. Agent DiFrangia, I would like you to
17 take a look at Edwards Exhibit 10.

18 MR. WEINBERGER: And, James, these
19 aren't Bates stamped, but what we're going to
20 do is we're going to look at 4729-5-20. So
21 it's a couple pages in. There we go.

22 Q. Agent DiFrangia, do you have
23 4729-5-20 in front of you from Exhibit 10?

24 A. I -- yes.

25 Q. Thank you.

1 So you were asked a whole lot of
2 questions by Mr. Barnes about this particular
3 section of the Ohio regulations entitled
4 "Prospective Drug Utilization Review."

5 With respect to Sections A --
6 Section A, do you know whether or not this
7 particular section has been in effect for about
8 20 years?

9 A. I don't know.

10 Q. I'm particularly interested in
11 Section A(4), which is drug-drug interactions,
12 and let me ask you, does that include what you
13 testified to regarding in Exhibit -- DiFrangia
14 Exhibit 9, when we looked at drug cocktails?

15 A. No. I don't know.

16 Q. Well, isn't it true that the trilogy
17 drugs that are described in Exhibit 9, which is
18 a combination of an opioid, an anti-anxiety drug
19 and a muscle relaxant, are red flags because of
20 the way in which they interact together?

21 A. Yeah. From what I've been told by,
22 you know, prescribers and pharmacists.

23 Q. So knowing that, would it be fair to
24 say that drug-drug interactions under Section
25 A(4) refers to that -- to cocktail drugs, as an

1 example?

2 A. I don't know if that refers to
3 cocktail drugs.

4 Q. If it does, that should be part of a
5 pharmacy's drug utilization review when filling
6 an opioid, correct?

7 A. I don't know if it has any
8 reference to that trilogy cocktail that we
9 discussed.

10 Q. I want to go to the second page of
11 this and that's Section G of 4729-5-20. This is
12 the section that you testified earlier in my
13 cross-examination of you that relates to the
14 corresponding responsibility of the pharmacist,
15 correct?

16 A. Yes.

17 Q. And it specifically says in the
18 second sentence, "The responsibility for the
19 proper prescribing is upon the prescriber, but a
20 corresponding responsibility rests with the
21 pharmacist who dispenses the prescription,"
22 correct?

23 A. It does say that.

24 Q. "Based upon information obtained
25 during a prospective drug utilization review, a

1 pharmacist shall use professional judgment when
2 making a determination about the legitimacy of a
3 prescription," correct? I've read that
4 correctly?

5 A. Yes.

6 Q. And it goes on to say that if
7 there's any -- if there's any concern about
8 whether or not a prescription is questionable,
9 doubtful, or suspicious, the pharmacist is not
10 required to fill the prescription, correct?

11 A. It does say that, yes.

12 Q. That's what we're talking about when
13 I earlier asked you about the pharmacy and the
14 pharmacist being the last line of defense with
15 respect to opioid prescriptions, correct?

16 A. I mean, in my opinion I think
17 that's accurate.

18 Q. All right. Now, can we agree that
19 when the pharmacist is exercising his judgment
20 in fulfilling this corresponding responsibility,
21 the pharmacy that he works for has the
22 obligation of giving the pharmacist adequate
23 tools to be able to do his job, correct?

24 MR. BEISELL: Objection.

25 MS. SWIFT: Objection. Calls for a

1 legal conclusion.

2 Q. You can answer.

3 A. I don't know.

4 Q. Well, with respect to information
5 coming from dispensing data that the pharmacist
6 might want to utilize to exercise his
7 corresponding responsibility, the information is
8 only as good as that which is provided to the
9 pharmacist by his employer, the pharmacy,
10 correct?

11 MS. SWIFT: Object to the form.

12 A. I don't -- I don't know what a
13 pharmacist would want or need because I am not
14 a pharmacist.

15 Q. Well, you do know that OARRS --
16 access to the OARRS data for as long as it's
17 been accessible, which doesn't go back 20 years
18 but I think goes back something less than that,
19 is -- has the potential for providing important
20 information to the pharmacist in fulfilling his
21 corresponding responsibility, right?

22 A. Yes.

23 Q. And if the pharmacy that employs him
24 has information that's similar to what is
25 contained in OARRS and has had that information

1 for years long before OARRS was in existence,
2 that information could potentially be helpful to
3 the pharmacist in carrying out his corresponding
4 responsibility, true?

5 A. You know, again, I don't -- I don't
6 know if that would be helpful because, you
7 know, I think that would be a question geared
8 for a pharmacist.

9 Q. Well, certainly your inspection and
10 that of the other agents doesn't look at that
11 question, does it?

12 A. Which question?

13 Q. The question of whether or not the
14 retail pharmacy chain that employs these
15 pharmacists is giving the pharmacist adequate
16 information from their dispensing data to help
17 that pharmacist carry out his corresponding
18 responsibility.

19 A. I mean, that specific question is
20 not asked during an inspection.

21 Q. Okay. And --

22 MR. BARNES: Excuse me. I was
23 muted. I didn't realize I was muted. I did
24 have objections to the form of the last two
25 questions.

1 MR. WEINBERGER: That's fine. I'm
2 sure they'll note it in the record and I'll
3 recognize it.

4 Q. You mentioned with respect to the
5 December 18, 2018 report from your inspection of
6 the Trumbull County Giant Eagle that this
7 format, this computerized or computer-generated
8 format, is a new format that is very helpful in
9 helping you document inspections, correct?

10 A. Yes.

11 Q. And from looking at prior inspection
12 reports that were not using this system, you
13 have generally an idea of what those reports
14 look like, right?

15 A. Yes.

16 Q. And those were handwritten reports
17 that had a column of items that I guess the
18 inspector might be considering in doing the
19 inspection, correct?

20 A. Yes.

21 Q. Looking at drug utilization review
22 reports or dispensing data is not a part of any
23 of the 40 sections or description of 40 items
24 that they might inspect in those old reports;
25 are you aware of that?

1 MR. BARNES: Object to form.

2 A. No, I'm not aware of that because
3 I've never used those old handwritten reports.

4 Q. So of your own personal knowledge,
5 Agent DiFrangia, would it be fair to say that
6 you have no idea prior to 2016 whether any of
7 the inspectors were looking at dispensing data
8 or drug utilization reports as they might be
9 accessed by a pharmacist during their
10 inspection?

11 A. I mean, I'd have to guess that they
12 were.

13 Q. We don't want you to guess.

14 A. But I don't know for sure because
15 I've never conducted an inspection prior to
16 2016.

17 Q. All right. Now, I want to talk with
18 you a little bit about this December 18, 2018
19 inspection report, so that's in Exhibit 30 --
20 Exhibit 17 towards the back. Can you pull that
21 out and put it in front of you?

22 A. Sure.

23 Q. Let me know when you're there. We
24 also have it up on the screen. Do you got it?

25 A. I'm still going through the pages

1 here.

2 Yes, I have it up. I'm sorry.

3 December --

4 Q. 18th, 2018.

5 A. Okay.

6 Q. I want to go through the process of
7 this kind of inspection. And we can agree that
8 this is the only full inspection that you did of
9 a Giant Eagle store in Trumbull County since you
10 were a Board of Pharmacy agent, correct?

11 A. Yes. As far as I can recall it is.

12 Q. So do you -- is there -- do you have
13 a laptop with you when you're doing this?

14 A. Yes.

15 Q. All right. And then it has a number
16 of questions or drop-down items that you can
17 utilize on the computer software?

18 A. Yes.

19 Q. And according to the second page of
20 the report, this -- well, let me ask you this:
21 When it says "start" and "end, December 18,
22 2018, 12:45 p.m. - 3:36 p.m.," what does that
23 mean?

24 A. That is pretty much the time that
25 you initiate the inspection, the software on

1 the computer, and then the end time is, at the
2 end when you hit "finalize," it sends an e-mail
3 to myself and then it also sends an e-mail
4 to -- to the staff pharmacist which is there.
5 It signifies the minute you hit that finalize
6 button.

7 Q. So do you have any idea what time
8 you got to the -- to this particular pharmacy,
9 what time you arrived?

10 A. No, I don't.

11 Q. Do you have any idea what time you
12 left?

13 A. No.

14 Q. Do you have any idea how long the
15 inspection took place?

16 A. Well, the inspection took place
17 from about that time.

18 Q. So this was an inspection for how
19 long?

20 A. From about 12:45 to 3:36.

21 Q. So about four hours approximately?

22 A. I mean, give or take, but no. It's
23 -- I mean, we're looking at not quite three
24 hours that you could say the inspection was
25 actually occurring, but, I mean, was there time

1 that I spoke with the pharmacist before or
2 spoke with him after, I really don't recall,
3 but that's generally what happens during
4 inspections.

5 Q. In these retail pharmacy chain
6 stores like Giant Eagle, is there -- do you know
7 whether or not they have a video system where
8 they are taking videos of what's happening
9 within the pharmacy?

10 A. Yeah. This pharmacy, I believe
11 they do have a video system.

12 Q. Have you ever looked at any of the
13 video system tapes?

14 A. For this pharmacy?

15 Q. Yes.

16 A. Not that I recall.

17 Q. The time frame between 12:45 and
18 3:36 p.m., from your knowledge, in terms of
19 inspecting these retail pharmacy chain stores,
20 is that a particularly busy time or a slow time?

21 A. I think that's probably more of a
22 busier time.

23 Q. Why is that?

24 A. Well, you've got people that maybe
25 on their lunch break they're trying to get

1 their prescriptions filled, and then towards
2 the end of their shift they're coming in to get
3 their prescriptions filled.

4 Q. Setting aside the Giant Eagle
5 pharmacy, which is a part of a large grocery
6 store, with respect to CVS and Walgreens and
7 Rite-Aid, you've been in all their stores?

8 A. Yes.

9 Q. Do they have, generally speaking, a
10 busier time than that from your experience?

11 A. No. I think it's -- I think
12 they're pretty steady for the most part. I
13 mean, the evenings are less busy. The mornings
14 I think are busier. They're getting, you know,
15 prescriptions that came in overnight or things
16 from late in the day the prior day. But, I
17 mean, generally it -- it really depends.
18 They're pretty steady throughout the day.

19 Q. Well, have you ever looked and
20 studied any of the videos of -- by the way, does
21 CVS and Walgreens also have video systems
22 that -- particularly with respect to their
23 pharmacies?

24 A. Yeah. I'm sure they have in some
25 pharmacies. I don't know if they have them in

1 all.

2 Q. Have you ever looked at any of the
3 CVS or Walgreens or Rite-Aid videos?

4 A. During inspections?

5 Q. Yes.

6 A. No, not during inspections
7 generally.

8 Q. Okay. So when you, for example,
9 made the conclusion that there was adequate
10 staffing, that was based upon your observations
11 during this time frame at the Giant Eagle store,
12 right?

13 A. Yes.

14 Q. You never looked at the video for
15 the whole day of this store to determine whether
16 or not there was adequate staffing, right?

17 A. No, I did not.

18 Q. Nor have you ever done that with
19 respect to any of the other retail chain
20 pharmacies that you inspected, correct?

21 A. That's correct, I haven't.

22 Q. Now, in the course of investigating
23 a potential -- let me ask you this: You were
24 involved in an investigation that resulted in
25 testimony in the case of Carrie Allen, who was a

1 Rite-Aid technician who was stealing from the
2 pharmacy.

3 Do you recall that case?

4 A. Yes.

5 Q. And you -- to perform that
6 investigation and to work up the case, you had
7 installed an Ohio Board of Pharmacy surveillance
8 camera, correct?

9 A. Yes.

10 Q. And you were able to use that camera
11 in order to catch the pharmacist, Carrie Allen,
12 or the technician, stealing hydrocodone pills,
13 right?

14 A. I think it was -- I think it was
15 alprazolam pills, if I'm thinking of the
16 correct person.

17 Q. From the information I have, it was
18 both alprazolam and hydrocodone. Does that
19 refresh your memory?

20 A. I mean, we're talking about a
21 Rite-Aid pharmacy in Newton Falls?

22 Q. Yes.

23 A. Okay.

24 Q. Did that Rite-Aid pharmacy have
25 video cameras of its own?

1 A. I think they did, yes.

2 Q. Why did you have to install your own
3 cameras?

4 A. Well, their cameras were not --
5 from what I recall, they were limited and they
6 only covered a limited portion of the pharmacy,
7 and, you know, we realized that there was an
8 issue with the hydrocodone and then the
9 alprazolam, so my camera was focused
10 specifically on those areas.

11 Q. So let's go back -- let's go back to
12 this part of Exhibit 17, your December 18, 2018
13 inspection report. Going to page 3 of 10,
14 before when I asked you how many detailed
15 patient profiles you looked at in order for you
16 to determine whether this particular store
17 complied with the regulations regarding detailed
18 patient profile, you said you looked at one
19 patient's profile, correct?

20 A. Yes.

21 Q. And the patient profile that you
22 looked at was a patient who you were
23 investigating, right?

24 A. I don't know that I was
25 investigating the patient, but he was -- the

1 investigation was surrounding him. I don't
2 think it was against him.

3 Q. A complaint about a HIPAA violation?

4 A. Yes.

5 Q. And so you asked the pharmacist --
6 did you ask the pharmacist to pull up the
7 patient profile or did you do it yourself?

8 A. I would have asked them.

9 Q. And the second question under Record
10 Availability says, "Can the pharmacy produce
11 three years of dispensing records within three
12 days?" And the answer was "Yes." How did you
13 get that information?

14 A. From what I recall, I probably just
15 asked it.

16 Q. Okay. So you didn't -- you didn't
17 ask anybody to go into the records or into the
18 data on the computer system to confirm that they
19 could do that, correct?

20 A. No. I just asked them if they were
21 able to produce records within three days.

22 Q. Now, was that -- were those -- for
23 example, were those very questions questions
24 that would have been asked by an inspector prior
25 to 2017, when this new system of inspection and

1 computerized system went into effect?

2 A. I don't know for sure.

3 Q. Let's go to the next page. You
4 testified about the shared dispensing software,
5 2.3.4, and you -- I think you testified and --
6 that the shared dispensing software -- "Is there
7 a real time online system used for review and
8 transfer of dispensing data?" The answer is
9 "Yes." And then there's an observation that
10 says "Yes." What does that mean?

11 A. Well, again, that -- that relates
12 to, you know, is it real time for the other
13 vacancy, real time what this patient has been
14 dispensed and, you know, if they can see for
15 pharmacies within their -- within their chain.

16 Q. And did you actually see the data
17 yourself?

18 A. No. Again, this is something that
19 I would ask the pharmacist.

20 Q. So you didn't -- you didn't confirm
21 it yourself by looking at the computer screen,
22 you were just relying on the pharmacist's
23 answer?

24 A. Correct.

25 Q. And going to page 7, number 10,

1 Improper Dispensing. "Is there evidence to
2 indicate that a prescription has been dispensed
3 improperly? And your answer was "No." What was
4 that based -- what was that answer based on?

5 A. That's generally based on what I
6 typically will do is review some of the hard
7 copy prescriptions.

8 Q. How many did you review that day?

9 A. I don't know.

10 Q. You didn't look at any of the
11 dispensing data to determine whether or not any
12 prescription was dispensed improperly?

13 MR. BARNES: Objection. Asked and
14 answered.

15 Q. What's your answer?

16 A. I don't know. I don't recall. You
17 know, I -- I was thinking about the
18 investigation that I was reviewing and, you
19 know, I just don't know. I don't know what I
20 looked at exactly.

21 Q. The next question, which asks about
22 insufficient supervision is based upon -- was it
23 based upon your observations during that couple
24 hours that you were there or something else?

25 A. That's based on my own

1 observations.

2 Q. Well, did you -- did you ask for the
3 data on the number of opioid prescriptions that
4 were filled during any particular time frame at
5 that store?

6 A. No.

7 Q. And did you ask for information as
8 to how many pharmacists or pharmacy techs were
9 working at the store at any particular point in
10 time during the day?

11 A. Well, yeah, that I would have
12 documented on the first page, everyone that was
13 there.

14 Q. So did you ever compare the number
15 of prescriptions filled to the number of
16 pharmacists employed at the store?

17 A. No.

18 Q. So the way to really determine
19 whether or not there was adequate supervision
20 and sufficient employees to fill -- to properly
21 and safely fill prescriptions would be to look
22 at the number of prescriptions filled and
23 compare that with the number of pharmacists or
24 pharmacy techs employed at the store, right?

25 MR. BARNES: Objection. Lack of

1 foundation.

2 A. I don't know if that's -- that's
3 the way that has to be reviewed.

4 Q. Well, does the Board of Pharmacy
5 ever look at those sorts of metrics, meaning
6 number of prescriptions filled versus number of
7 pharmacists or pharmacy techs employed, in order
8 to determine whether there's adequate personnel
9 or supervision?

10 A. For different types -- for
11 different investigations, such as an error in
12 dispensing, we record the amount of
13 prescriptions dispensed for a particular day in
14 which a suspected error may have occurred.

15 Q. You know, you were asked a question
16 to compare the conduct of independently owned
17 pharmacies versus these retail chain pharmacies,
18 and your answer was something along the lines of
19 that the independent chain pharmacy that's
20 family owned or individually owned might be more
21 incentivized to fill more prescriptions. Did I
22 summarize your testimony correctly?

23 A. Yes, in my opinion.

24 Q. Have you ever inquired of the retail
25 chain pharmacies whether or not they have a

1 bonus system or ever had a bonus system for
2 their pharmacist that was driven by the number
3 of prescriptions that they filled either per
4 hour or per day?

5 A. No, I have not.

6 Q. If you -- if you learned
7 hypothetically that for a significant period of
8 time, these retail chain pharmacies paid out
9 bonuses to their pharmacists based upon the
10 number of prescriptions that they filled, would
11 that change your testimony about that
12 comparison?

13 MR. BARNES: Object to form. I
14 don't think it's appropriate to ask a fact
15 witness a hypothetical question.

16 MR. WEINBERGER: Well, you asked
17 him a very broad hypothetical question and I'm
18 entitled to do the same.

19 MR. BARNES: For the record, I did
20 not ask a hypothetical question.

21 Q. If you knew there wasn't such a
22 bonus system, would that change your position as
23 to what incentives might exist within the retail
24 chain pharmacies to fill prescriptions?

25 MR. BARNES: Same objection.

1 A. Potentially, but I really don't --
2 I don't know.

3 Q. In Exhibit 17, further into the
4 exhibit I want you to pull out a Giant Eagle
5 inspection -- full inspection report for August
6 31, 2020. It starts Bates stamp 2796421. Let
7 me know when you're there.

8 A. Yes, I'm here.

9 MR. BARNES: I'm not there yet.
10 Can you tell me how many pages into the exhibit
11 it is?

12 MR. WEINBERGER: It's -- I think
13 it's the last inspection report, Bob --

14 MR. BARNES: Hold on.

15 MR. WEINBERGER: -- under Exhibit
16 17.

17 THE WITNESS: Is this the one
18 prepared by --

19 MR. WEINBERGER: August 31, 2020
20 prepared by Kimberly Hollingshead.

21 MR. BARNES: I'm there.

22 Q. Agent DiFrangia, you've got it in
23 front of you?

24 A. Yes.

25 Q. Do you know Agent Hollingshead?

1 A. Yes. She's an inspector with the
2 Board of Pharmacy.

3 Q. So she has specific duties to
4 inspect pharmacies, as you've previously
5 described, which is different from being an
6 agent, correct?

7 A. Yes.

8 Q. And apparently she was using the
9 same software --

10 MR. APPEL: I'm sorry. Can we take
11 a very brief break? I have to get my child off
12 the bus.

13 MR. WEINBERGER: Oh, sure.

14 THE VIDEOGRAPHER: Off the record
15 at 3:09.

16 (Recess had.)

17 THE VIDEOGRAPHER: Back on the
18 video record at 3:11.

19 BY MR. WEINBERGER:

20 Q. We're looking at an inspection
21 report in Exhibit 17, Defendants' Exhibit 17.
22 Again, just by way of background, this is --
23 these are -- this is a report obtained by the
24 Defendants per a subpoena that was issued on the
25 Board of Pharmacy. This report was -- this

1 inspection was apparently completed by Inspector
2 Hollingshead, correct?

3 A. Yes.

4 Q. Using the same format as you used in
5 your 2018 inspection report that we previously
6 had discussed, right?

7 A. Yes.

8 Q. I want you to go to page 9 of this
9 report. If you go to page 8, this is a section
10 under Section 38 regarding OARRS.

11 A. Okay.

12 Q. And it has a number of questions
13 about OARRS. And under Section 5 there's a
14 question, "When should a pharmacist request an
15 OARRS report?" And there is an observation, and
16 it appears that this inspector has taken a lot
17 of the language directly from the regulation
18 that we previously looked at, correct?

19 A. Well, actually, that language I
20 believe is like -- it's pretty formatted within
21 the inspections, so, you know, the inspection
22 software does change over time. So this one,
23 it's got that pre-formatted information in
24 there.

25 Q. So it populates from the software,

1 correct?

2 A. Yes.

3 Q. So Section 7, under number 5, on
4 when should a pharmacist request an OARRS
5 report, says, "If in doubt, run the OARRS
6 report. You don't know what you don't know.
7 It's okay to say no. You might save a life."

8 Did I read that correctly?

9 A. Yes.

10 Q. And so that's a message in this
11 inspector's report to this Giant Eagle that if
12 there's any doubt or any suspicion about a
13 prescription, you need to run an OARRS report
14 and look at the profile and data to determine
15 whether or not to, in fulfilling the
16 corresponding responsibility, to fill or not
17 fill the prescription, correct?

18 MR. BEISELL: Objection to form.

19 A. Yes. The data regarding the OARRS
20 report.

21 Q. Right. Because if you don't, in
22 fulfilling your corresponding responsibility as
23 a pharmacist, it might be dangerous, it might
24 create a danger to the patient or a risk of
25 diversion, correct?

1 A. Yes.

2 Q. And that's what's meant by it's okay
3 to say no, it's okay to not fill the
4 prescription, right? That's what that means,
5 right?

6 A. Yes.

7 Q. And it says you might save a life if
8 you don't fill the prescription, correct?

9 A. Yes, it says that.

10 Q. Now, is this part of the software
11 that self-populates now, in --

12 A. I -- I'm not sure.

13 Q. Or it might have just been a
14 statement typed into this report by this
15 inspector?

16 A. No. This was a self-populating
17 portion that was in -- it was in there at the
18 time because at the time I was conducting more
19 inspections and, you know, we put our points of
20 emphasis in these so that the pharmacist can
21 have them as a reference.

22 Q. So this goes back, Agent DiFrangia,
23 to what we started out with during my
24 cross-examination, and that is that with
25 dangerous drugs, like opioid prescription drugs,

1 it's extremely important that the pharmacist
2 perform their corresponding responsibility using
3 the tools that they have or are given to analyze
4 these prescriptions carefully before dispensing
5 them, correct?

6 MR. BARNES: Object to form.

7 A. I think that's correct in terms of
8 OARRS.

9 Q. And if these Defendant retail
10 pharmacy chains had dispensing data that
11 contained significant amounts of information
12 that could identify the red flags that we've
13 talked about earlier and could provide that to
14 the pharmacist, at the pharmacist's computer
15 station in the pharmacy store, as they are
16 looking and potentially dispensing opioid
17 prescriptions, that would certainly assist the
18 pharmacist in fulfilling their corresponding
19 responsibility, true?

20 MR. BARNES: Object to form. Lack
21 of foundation as to what a pharmacist might do.

22 Q. You can answer.

23 A. I'm not sure what the answer is. I
24 don't know. I'm not a pharmacist. It might be
25 best geared toward a pharmacist.

1 MR. WEINBERGER: Agent DiFrangia,
2 that's all the questions I have at this time.
3 Thank you, sir.

4 MR. BARNES: I have some follow-up
5 questions, unless any of the other Defendants
6 want to go first.

7 FURTHER EXAMINATION OF WILLIAM DiFRANGIA
8 BY MR. BARNES:

9 Q. Agent DiFrangia, you were asked some
10 questions about the August 31st, 2020 inspection
11 in Exhibit 17 prepared by Inspector Kim
12 Hollingshead. That was just a couple minutes
13 ago.

14 A. Yes.

15 Q. Okay. You didn't perform that
16 inspection, you weren't there, and you don't
17 have any personal knowledge of that inspection;
18 is that correct?

19 A. That's correct.

20 Q. But this inspection does result, on
21 the last page, "No issues found by this
22 inspector"; is that correct?

23 A. Yes, that's correct.

24 Q. You were asked some questions in
25 this report about paragraph 5, which is related

1 to when to check OARRS. And you and I earlier
2 today went through all of that, right, what the
3 regulation actually says? Do you recall that?

4 A. Yes.

5 Q. And, in fact, this number 38, items
6 1 through 6, appear to be taken right from that
7 regulation; is that right?

8 A. In the Observation portion?

9 Q. Yes.

10 A. Yes.

11 Q. In fact, that appears to be right
12 out of Exhibit 10, regulation 4729-5-21,
13 Subsection D, items 1 through 6. You can take a
14 look back at it, but I think it's a direct cut
15 and paste out of that regulation, correct?

16 A. Yeah, it -- it certainly seems that
17 it is.

18 Q. Okay. And the regulation is the
19 actual -- sets forth the actual times when the
20 Ohio Board of Pharmacy tells a pharmacist these
21 are the times when we want -- when you have to
22 check OARRS, and it lays out those parameters
23 that we went over, correct, items 1 through 6 of
24 Subsection D of the regulation?

25 A. Yes.

1 Q. Okay. Did the Board of Pharmacy at
2 any time ever impose a regulation that said it
3 required the pharmacist to check OARRS each and
4 every time it filled a prescription?

5 A. To my knowledge, they have not.

6 Q. Okay. You told me earlier that
7 filling prescriptions involves a lot of
8 professional judgment on behalf of the
9 pharmacist; is that right?

10 A. Yes.

11 Q. So if, in the professional judgment
12 of a pharmacist, he or she felt that he or she
13 wasn't required under the regulation to check
14 OARRS but in their professional judgment wanted
15 to check OARRS, they could do that; is that
16 right?

17 MR. WEINBERGER: Objection.

18 A. Yes.

19 Q. Okay. You were asked some questions
20 about that inspection of the Giant Eagle
21 pharmacy that you and I went over. You had told
22 me earlier -- you had said that this was the
23 only full-blown inspection that you had
24 conducted of a Giant Eagle store in Trumbull
25 County; is that right? You testified to that?

1 A. Yes.

2 Q. And you had told me earlier that you
3 also inspected other Giant Eagle stores in other
4 counties, correct?

5 A. Yes.

6 Q. And did you find in those
7 inspections across multiple counties that the
8 Giant Eagle stores had a corporate-wide system
9 of software and policies and procedures that you
10 saw repetitively doing the same thing that the
11 other stores were doing?

12 MR. WEINBERGER: Objection.
13 Improper redirect.

14 Q. I'm sorry. What was your answer?

15 A. Yes.

16 Q. Okay. There was a reference -- you
17 made a reference to Giant Eagle's pharmacies are
18 inside the grocery stores. Do you recall that?

19 A. I -- yeah, I think I do remember
20 making that reference.

21 Q. Okay. Did that mean anything to you
22 as an agent, that the pharmacies were not
23 stand-alone pharmacies on a corner but actually
24 embedded inside grocery stores, with respect to
25 your inspections? Was that a neutral item, a

1 positive item or a negative item?

2 A. It had no influence on my
3 inspections.

4 Q. Okay. Now, when you go in for your
5 inspections, the Giant Eagle pharmacist doesn't
6 tell you what you're going to look at; is that
7 correct?

8 MR. WEINBERGER: Objection.

9 A. That's correct.

10 Q. In fact, under the regulations that
11 we went over, it's you as the agent are the one
12 telling the pharmacist what you're going to look
13 at and what they're going to provide if they
14 want their license to continue; is that right?

15 MR. WEINBERGER: Objection.

16 A. That's correct.

17 Q. All right. So when you look at
18 patient profiles, for example -- you were asked
19 some questions on cross about patient
20 profiles -- do you find that the software
21 systems used across these chain pharmacy stores
22 tend to or almost always have the same type of
23 system, so if you see a patient profile in a
24 software system at one Giant Eagle store, you
25 are going to tend to see the patient profile

1 system at another Giant Eagle store?

2 MR. WEINBERGER: Objection.

3 A. Yeah. Pretty much from what I've
4 seen, they're all similar.

5 Q. Okay. So the fact that you would
6 look at one patient profile in this December 18,
7 2018 inspection, that number of profiles that
8 you wanted to look at, was that based in part
9 upon what you had seen before and your
10 familiarity with the software and how the
11 patient profiles worked in that software?

12 MR. WEINBERGER: Objection.

13 A. Yes. It was similar to documents
14 and records that I've seen before from Giant
15 Eagle.

16 Q. Okay. And if you had wanted to look
17 at any additional patient profiles, you
18 certainly had that right; is that right?

19 MR. WEINBERGER: Objection.

20 A. Yes.

21 Q. Okay. And if you wanted to check
22 how far back dispensing records went, you could
23 have done anything you wanted, checked the
24 software, talked to technicians, looked at the
25 records? There was no boundary on what you

1 could do when you were in there in the
2 inspection; is that right?

3 A. That's correct.

4 Q. Okay. The same with the software
5 systems; you had seen software systems in your
6 other inspections of chain pharmacy stores, so
7 when you went in to do another inspection, if
8 you saw the same system, oftentimes, am I
9 correct, that it's software you had already seen
10 in other stores?

11 MR. WEINBERGER: Objection.

12 A. Yes, in regards to retail chain
13 pharmacies.

14 Q. Okay. It was a little bit different
15 with independents. Did they have different
16 software systems or no software systems?

17 A. Yeah, they have, you know,
18 different software vendors from independent
19 chain -- or independent pharmacy to independent
20 pharmacy.

21 Q. All right. You were asked some
22 questions on cross about insufficient
23 supervision, Section 11 of these reports, and I
24 believe you testified that in the several hours
25 that you spend in these pharmacies, including

1 during busy times, you're able to observe
2 whether or not they appear to be sufficiently
3 staffed; is that right?

4 MR. WEINBERGER: Objection.

5 A. Yes, that's correct.

6 Q. All right. And I think you told me
7 earlier that before you even go in for these
8 inspections, as an agent for the Board of
9 Pharmacy, you have full knowledge of every
10 prescription and the volume of prescriptions
11 written by these stores or filled by these
12 stores before you even go in for your
13 inspections, right? I mean, if you wanted to
14 get that information, it was available?

15 A. Yeah. If I wanted to, I could get
16 all the controlled substance dispensings from a
17 pharmacy prior to an inspection, and if it was
18 relevant, if there was a relevant investigation
19 to do so.

20 Q. All right. And with respect to
21 looking at dispensing records themselves, those
22 were fully available to you as an agent of the
23 board when you went in for your inspections or
24 otherwise? If you wanted to see the entire
25 dispensing data in addition to the OARRS data

1 you already had, you could demand that and get
2 it during your inspections, correct?

3 MR. WEINBERGER: Objection.

4 A. Yes, that's correct.

5 Q. In your inspections you were asked
6 some questions about incentives and there was a
7 reference back to your earlier testimony of
8 independent, family-owned pharmacies having
9 higher incentives, profit incentives to fill
10 prescriptions. My follow-up question is, with
11 respect to the retail pharmacy Defendants, bonus
12 information was available to you at any time,
13 compensation of pharmacists or pharmacy techs;
14 is that correct? If you wanted to see it, you
15 could demand it and you would get it; is that
16 right?

17 A. I don't know. I don't know that
18 I've ever asked for it and I don't know if
19 there would be pushback.

20 Q. Okay. But it wasn't something that
21 you as a board agent generally looked at as part
22 of your inspections; is that right?

23 A. That's correct.

24 Q. And sitting here today, Agent
25 DiFrangia, are you aware of any Ohio regulation

1 that regulates how pharmacists are compensated
2 one way or the other?

3 A. No, I'm not aware of anything like
4 that.

5 Q. You were asked a lot of questions
6 early in the cross-examination about whether or
7 not your testimony was based upon your
8 experience only as a board agent, and I believe
9 you at one point indicated that you also had
10 prior experience that we went over in law
11 enforcement. So am I understanding that the
12 testimony that you've provided today is a
13 combination not only of your board experience
14 but also your prior law enforcement experience?

15 A. It is.

16 Q. And you've certainly had
17 interactions with the pharmacy Defendants'
18 stores and pharmacists for many years prior to
19 becoming a board agent; is that right?

20 A. Yes, that's correct.

21 Q. I want to pull up DiFrangia Exhibit
22 9. You were asked a lot of questions about
23 that. Are you with me?

24 A. Yes. Which --

25 Q. At binder 2 near the end, DiFrangia

1 Exhibit 9.

2 A. Okay. Yes, Exhibit 9.

3 Q. I had asked you some overview
4 questions. I want to follow up due to the
5 questioning on cross.

6 This document is captioned
7 "Prescription Drug Investigation Techniques and
8 Workflow." Is this an indication to you that
9 this is a board internal document related to
10 how the board agents and inspectors -- the
11 suggested way to perform their functions?

12 A. Yes, but this is more or less
13 tailored for agents, not so much inspectors.

14 Q. Okay. And so do you know if this --
15 when or how this was prepared and by whom?

16 A. I do not know.

17 Q. Okay. The first big section, items
18 1 through 21, Data Anomalies, is this a
19 reference to the OARRS data that is available to
20 the board and its agents when conducting
21 investigations?

22 A. Yes.

23 Q. So, for example, data anomaly number
24 1 and 2, large total number of patients and
25 daily patient breakdown, that's something that a

1 board agent can go into the OARRS data and look
2 at prescribers generally and determine the
3 number of patients and the daily patient
4 breakdown; is that right?

5 A. Yes, just for controlled
6 substances.

7 Q. For controlled substances.

8 But this is not something that a
9 pharmacist could do, correct? They couldn't go
10 into the OARRS data and take a look at how
11 many -- the number of patients that a
12 prescriber has or the daily patient breakdown
13 for controlled substances, correct?

14 MR. WEINBERGER: Objection.

15 Q. We covered that earlier?

16 A. Correct.

17 Q. So when you were asked on cross
18 about whether these were red flags, correct me
19 if I'm wrong but these are internal -- you call
20 them data anomalies that board agents would look
21 at based upon their special access to the OARRS
22 data, correct?

23 A. Correct.

24 Q. And would that include number 3,
25 large overall volume of prescriptions? Is that

1 special board agent access only; as part of
2 doing an investigation of a prescriber, you
3 would be able to go in and look at the total
4 volume of prescriptions issued by a prescriber?

5 A. Yes. Law enforcement also has --
6 would have access to that.

7 Q. Okay. And number 4, patients with
8 drug-related criminal histories, that's
9 something that is unique to the -- to the board
10 agent, right? I mean, how would a pharmacist,
11 for example, know about a criminal history?
12 That's a law enforcement data point, isn't it?

13 A. Yes.

14 Q. Okay. So so far, 1 through 4, these
15 are internal board agent specific only; am I
16 right?

17 MR. WEINBERGER: Objection.

18 A. Yes, this is an internal document
19 just for Board of Pharmacy members.

20 Q. Okay. This isn't -- this document
21 isn't something that was issued to pharmacists
22 and said, you know, look for these things;
23 instead, this is something that is internal to
24 the board only, that its agents should consider
25 looking at, correct?

1 A. Correct.

2 Q. And would that include number 5,
3 prescribing similar drugs in groups, including
4 cocktails? That's a board agent inquiry, not a
5 pharmacist inquiry, correct?

6 A. Yes. It's -- like I said, it is
7 issued to board agents and other board staff.

8 Q. Okay. So if I went through each one
9 of these items, the remainder, 6 through 21,
10 would you give me the same answer, that each one
11 of these things is internal -- is an internal
12 board agent data point to consider in
13 investigations and not a pharmacist's
14 requirement?

15 A. Yes.

16 Q. Okay. And then down below on the
17 General Workflow, is this section of this
18 internal -- board only internal report a general
19 description of how to do your investigation once
20 you consider the data anomalies?

21 A. Yeah. This is generally, you know,
22 a work flow of how to -- how to interpret some
23 of the data and come to a conclusion after
24 reviewing it.

25 Q. Are you familiar with the algorithms

1 and formulas used by the board, the OARRS
2 department, to analyze the prescription data
3 that's coming into the board on a daily basis?

4 A. No.

5 Q. Do you know that they do run
6 algorithms and the formulas to analyze the data,
7 the prescription data, to provide investigative
8 leads to the agents?

9 A. I know OARRS provides leads but I
10 don't know how they -- how they get to them.

11 Q. Okay. And so DiFrangia Exhibit 9
12 is, you told me, an internal document. This is
13 not something that's in the regulations that we
14 went over; is that correct?

15 A. Correct.

16 Q. So when Mr. Weinberger was asking
17 you questions about red flags, did you -- were
18 your answers to him in the context of these are
19 red flags for the board agents internally?

20 A. Yes.

21 Q. Do you know, in your four and a half
22 years and prior experience actually in law
23 enforcement, to your knowledge, were pharmacies
24 or pharmacists ever required to analyze data
25 anomalies as reflected on this Exhibit 9 or was

1 that a board responsibility?

2 A. I don't know if any pharmacist was
3 ever asked to review this. Again, this is all
4 internal board documents.

5 Q. Okay. You were asked some questions
6 about the pharmacist's corresponding obligation
7 and it being a so-called last line of defense.
8 Do you recall that questioning?

9 A. Yes.

10 Q. But, in your experience, Agent
11 DiFrangia, the first line of defense is the
12 doctor, correct?

13 MR. WEINBERGER: Objection.
14 Leading.

15 A. Yeah, in my opinion and my
16 experience.

17 MR. WEINBERGER: Move to strike.
18 Bob, we can't hear you.

19 THE VIDEOGRAPHER: Off the record
20 at 3:40.

21 (Recess had.)

22 THE VIDEOGRAPHER: We are back on
23 the record at 3:43.

24 BY MR. BARNES:

25 Q. Agent DiFrangia, sorry about that

1 technology break. I don't know if you heard my
2 last two questions. I didn't realize my
3 microphone had died. But we were talking about
4 the doctors being the first line of defense in
5 prescribing. Do you recall that?

6 A. Yes.

7 Q. And my follow-up question was, in
8 your experience, it's the doctor that examines
9 the patient and diagnoses the patient and treats
10 the patient, correct?

11 A. Yes.

12 Q. Before issuing the prescription,
13 correct?

14 A. Yes.

15 Q. And when the patient shows up at the
16 pharmacy and presents that prescription, it's --
17 in your understanding, it's not the role of the
18 pharmacist to exercise medical judgment or
19 interfere with the medical judgment of the
20 doctors; is that correct?

21 MR. WEINBERGER: Objection.

22 A. That, I'm not sure.

23 Q. All right. Well, we went over the
24 regulations as to what a pharmacist is supposed
25 to do when filling a prescription and I didn't

1 recall seeing anything like examine the patient
2 or diagnose the patient or come up with a
3 treatment plan for the patient. Do you agree
4 with me on that?

5 MR. WEINBERGER: Objection.

6 A. Yes.

7 Q. Okay. Are your inspections
8 influenced by past inspections of the same
9 pharmacy chain? For example, if you have
10 repetitively good inspections at a pharmacy
11 chain, does that influence the nature and scope
12 of your ensuing inspections?

13 MR. WEINBERGER: Objection.

14 A. No. It's just based on the
15 pharmacy that I'm in at that point in time.

16 Q. Okay. Beyond the regulations that
17 we went through, the manner of dispensing
18 prescriptions regulations that we went through
19 this morning, are you aware of any other
20 regulations that required the pharmacies to do
21 anything more beyond those regulations?

22 MR. WEINBERGER: Objection.

23 A. As far as just for manner of
24 issuance of prescriptions?

25 Q. Correct.

1 A. I mean, I think there's some more
2 that -- but I don't -- I can't think of them
3 off the top of my head.

4 Q. All right. And certainly if the
5 board wanted the pharmacies or pharmacists to
6 issue prescriptions in a certain way by
7 considering certain data, they would have put it
8 in a regulation; is that correct?

9 MR. WEINBERGER: Objection.

10 A. That, I don't know.

11 Q. Are there a lot of reasons why a
12 doctor might have a lot of patients that, in
13 your mind, don't raise any suspicion at all?

14 MR. WEINBERGER: Objection.

15 A. I'm sorry. Can you -- could you
16 repeat that?

17 Q. Yeah. I'm referencing back to that
18 Exhibit 9 that we went over and the number one
19 item was large total number of patients, and I'm
20 just curious, could a doctor have a large number
21 of patients and be totally legit in terms of the
22 way they're practicing?

23 MR. WEINBERGER: Objection.

24 A. Yeah. I mean, I think in my
25 opinion I believe they can. If the vast

1 majority of their patients aren't receiving any
2 type of controlled substances, then we could --
3 you know, we could potentially assume that it's
4 not any type of pill mill or anything of that
5 nature.

6 Q. And so is that something that you
7 ever looked at, I'll call it the ratio of
8 controlled substance prescriptions versus
9 overall prescriptions for a pharmacy? Is that a
10 relevant piece of information if you were trying
11 to consider, you know, whether the pharmacy was
12 doing anything inappropriately?

13 MR. WEINBERGER: Objection.

14 Q. Does that make sense to you?

15 A. It does. I've never looked at it.
16 It could be -- always could be useful to look
17 at, but I've never looked at that.

18 Q. Okay. Can you determine whether a
19 doctor is prescribing inappropriately based upon
20 the volume of prescriptions alone or do you need
21 to do a lot more work before you come to that
22 conclusion?

23 MR. WEINBERGER: Objection.

24 A. I would like to do more. I would
25 like to see more things -- me personally, I

1 would like to see additional things that are
2 leading in that direction, not just a large
3 amount of prescriptions.

4 Q. All right. But it's an internal
5 board agent anomaly that is listed here that is
6 something to consider, correct?

7 A. Yes.

8 Q. But it's merely the starting point,
9 not the ending point, right?

10 A. Yes.

11 Q. There's a listing here of age of
12 patient, 18 to 40. Why would the board
13 internally have its agents consider that? What
14 does that have to do with anything?

15 A. My guess, the way I interpret this
16 is that, you know, there may be concern if you
17 have a large amount of 20-year-olds obtaining
18 maybe some opiates, for example.

19 Q. So that's something internally the
20 board is saying agents should look at?

21 A. It's something to be considered
22 with everything else in this.

23 Q. But the mere age of a patient
24 doesn't necessarily indicate anything wrong is
25 going on, there's legitimate reasons why

1 patients in that age group might need an opiate
2 prescription; do you agree with that?

3 A. Yes.

4 Q. And, generally, Agent DiFrangia, do
5 you agree with me that there are many legitimate
6 medical reasons for prescribing opioids and
7 opioids in combination with other drugs based
8 upon the needs of patients?

9 A. You know, again, I don't --
10 obviously I'm not a doctor and I don't know
11 what -- you know, I don't know that I can
12 answer that.

13 Q. Okay. And you do know that opioids
14 dispensed through pharmacies are drugs that have
15 been approved and gone through appropriate
16 review channels, for example, by the FDA,
17 they've been approved for distribution and are
18 legal drugs that the federal authorities have
19 said deserve to be manufactured and dispensed?
20 You know that, correct?

21 A. Yes.

22 MR. BARNES: I've got nothing
23 further. Thank you, Agent DiFrangia.

24 Anybody else?

25 Okay. Thank you, sir.

1 MR. BEISELL: I'm sorry, Bob. I
2 have a few questions.

3 MR. BARNES: Sorry. Go ahead.

4 MS. CONROY: This is Mildred Conroy
5 for the Plaintiffs. I just want to make sure
6 Pete Weinberger can hear us.

7 MR. WEINBERGER: I got kicked off
8 for the last three minutes. So, Laura, what
9 were you about to say?

10 MS. CONROY: It's Mildred. I was
11 just -- they were about to stop questioning and
12 I just wanted to make sure you were there.

13 MR. WEINBERGER: I got kicked off
14 but go ahead and proceed.

15 MR. BARNES: Any follow-up
16 questions by Plaintiffs?

17 MR. WEINBERGER: I have no further
18 questions.

19 MR. BARNES: All right. Because
20 you got kicked off, Pete, I wanted to make sure
21 that no other Plaintiffs' counsel has follow-up
22 questions.

23 EXAMINATION OF WILLIAM DiFRANGIA

24 BY MR. BEISELL:

25 Q. Agent DiFrangia, can you hear me all

1 right?

2 A. Yes.

3 Q. Great. I just have a couple of
4 really small questions to clean up some
5 testimony from earlier this morning.

6 So you've been an agent with the
7 Ohio Board of Pharmacy since November 2016,
8 right?

9 A. Yes.

10 Q. And your area of responsibility from
11 that time period to the present has included
12 Trumbull County but not Lake County. Am I
13 understanding that correctly?

14 A. That's correct.

15 Q. Earlier this morning, and correct me
16 if I'm wrong, you testified that you never
17 personally conducted an inspection of a Walmart
18 pharmacy in Trumbull County; is that correct?

19 A. That's correct.

20 Q. Why is that?

21 A. Where I inspect pharmacies,
22 sometimes I try to be judicious about it. If
23 it's involving an investigation, you know, I'll
24 do it in conjunction with that just to really
25 manage my time.

1 Q. So is it -- would it be fair to say
2 that you didn't feel the need to inspect and
3 conduct a full inspection of the Walmart
4 pharmacies in Trumbull County?

5 A. I'm sure there was a time where I
6 felt that -- there just was nothing that was
7 directing my attention there.

8 Q. Understood. And you also mentioned
9 collaborating with a Walmart district pharmacy
10 manager relating to diversion. Do you remember
11 that testimony?

12 A. Yes.

13 Q. Do you remember that person's name,
14 by chance?

15 A. I don't.

16 Q. Okay. I know it's a bit of a test
17 all day long.

18 Do you recall the specifics of that
19 particular collaboration with the district
20 manager?

21 A. Yes. He called me regarding -- it
22 was a pharmacy technician that -- she was not
23 diverting drugs. She was stealing merchandise
24 from -- from the Walmart store.

25 Q. But not pharmacy related?

1 A. Correct.

2 Q. Understood.

3 MR. BEISELL: Thank you, Agent
4 DiFrangia. I don't have any further questions,
5 unless anyone else does.

6 MR. BARNES: Okay. That wraps it
7 up.

8 Henry, you going to review the
9 transcript I suppose?

10 MR. APPEL: Yes, Mr. DiFrangia will
11 review the transcript and sign.

12 THE VIDEOGRAPHER: Going off the
13 record at 3:55.

14

15 (Deposition concluded at 3:55 p.m.)

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1 Whereupon, counsel was requested to give
2 instruction regarding the witness' review of
3 the transcript pursuant to the Civil Rules.

4

5 SIGNATURE:

6 Transcript review was requested pursuant to
7 the applicable Rules of Civil Procedure.

8

9 TRANSCRIPT DELIVERY:

10 Counsel was requested to give instruction
11 regarding delivery date of transcript.

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REPORTER'S CERTIFICATE

[illegible]

I, Renee L. Pellegrino, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, WILLIAM DiFRANGIA, was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by the above referenced witness was by me reduced to stenotypy in the presence of said witness; afterwards transcribed, and that the foregoing is a true and correct transcription of the testimony so given by the above referenced witness.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified and was completed without adjournment.

1 I do further certify that I am not a
2 relative, counsel or attorney for either party,
3 or otherwise interested in the event of this
4 action.

5 IN WITNESS WHEREOF, I have hereunto set
6 my hand and affixed my seal of office at
7 Cleveland, Ohio, on this 19th day of January, 2021.
8
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12

13 Renee L. Pellegrino, Notary Public
14 within and for the State of Ohio
15

16 My commission expires October 12, 2025.
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Veritext Legal Solutions
1100 Superior Ave
Suite 1820
Cleveland, Ohio 44114
Phone: 216-523-1313

January 19, 2021

To: MR. APPEL

Case Name: National Prescription Opiate Litigation - Track 3 v.

Veritext Reference Number: 4399733

Witness: William DiFrangia Deposition Date: 1/14/2021

Dear Sir/Madam:

Enclosed please find a deposition transcript. Please have the witness review the transcript and note any changes or corrections on the included errata sheet, indicating the page, line number, change, and the reason for the change. Have the witness' signature notarized and forward the completed page(s) back to us at the Production address shown above, or email to production-midwest@veritext.com.

If the errata is not returned within thirty days of your receipt of this letter, the reading and signing will be deemed waived.

Sincerely,
Production Department

NO NOTARY REQUIRED IN CA

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DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 4399733
CASE NAME: National Prescription Opiate Litigation - Track 3
DATE OF DEPOSITION: 1/14/2021
WITNESS' NAME: William DiFrangia

In accordance with the Rules of Civil
Procedure, I have read the entire transcript of
my testimony or it has been read to me.

I have made no changes to the testimony
as transcribed by the court reporter.

Date William DiFrangia
Sworn to and subscribed before me, a
Notary Public in and for the State and County,
the referenced witness did personally appear
and acknowledge that:

They have read the transcript;
They signed the foregoing Sworn
Statement; and
Their execution of this Statement is of
their free act and deed.

I have affixed my name and official seal
this _____ day of _____, 20____.

Notary Public

Commission Expiration Date

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 4399733

CASE NAME: National Prescription Opiate Litigation - Track 3

DATE OF DEPOSITION: 1/14/2021

WITNESS' NAME: William DiFrangia

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have listed my changes on the attached Errata Sheet, listing page and line numbers as well as the reason(s) for the change(s).

I request that these changes be entered as part of the record of my testimony.

I have executed the Errata Sheet, as well as this Certificate, and request and authorize that both be appended to the transcript of my testimony and be incorporated therein.

Date

William DiFrangia

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;
They have listed all of their corrections in the appended Errata Sheet;
They signed the foregoing Sworn Statement; and
Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal
this _____ day of _____, 20____.

Notary Public

Commission Expiration Date

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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